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No. 04-905

Supreme Court, U.S.
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In The Supreme Court of the United States

VOLVO TRUCKS NORTH AMERICA, INC.,

Petitioner,

v.

REEDER-SIMCO GMC, INC.,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

JOINT APPENDIX
VOLUME II, PAGES 319 TO 496

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In the United States District Court
Western District of Arkansas
Fort Smith Division

Docket No. 00-CV-2031 (RTD)

Reeder-Simco GMC, Inc.,

Plaintiff,

v.

Volvo GM Heavy Truck Corp.,
n/k/a Volvo Trucks North America, Inc.,

Defendant.

Transcript of Proceedings

January 14, 2002 through January 24, 2002

[Testimony of Michael P. Truta]

* * *

[561] that correct? Was there a shift made where it went to a regional concept?

A I'm not sure the timeframes coincide with the 95 date, in all honesty.

Q Well, during the timeframe that Volvo was operating under the Operating Company Concept, was the company actively engaged in direct sales?

A I wouldn't call it actively; no, sir.

Q Okay. And during that timeframe there were no direct sales, which actually occurred within your district, were there?

A In my district at the time? No, sir.

Q All right. So that didn't develop until a little later on as far as –

A Well, my district territory changed, quite frankly.

Q All right. During the time frame that we were looking at the Operating Company Concept, what was the methodology of how concession pricing was given to a dealer?

A Typically the dealer would contact me as the District Sales Manager, and mostly, at that time period it was done either by paper as opposed to electronically, a concession request would come in like we've seen up there, and depending upon the particulars of the deal, I would grant them a concession, and if I felt the deal warranted more than I could under my guidelines give, I would then forward it up the management chain.

Q All right. At that time were the only determining factors [562] with respect to your authority in granting the concession request the particular model of the truck, and the number of the trucks in the deal?

A No, sir.

Q All right. Do you remember when I took your deposition in this case?

A Yes, sir. I remember it quite frankly.

Q And let me refer you to page 16 of your deposition.

THE COURT: Does he have a copy of his deposition?

MR. WILLIAMS: It's sitting right there, Mike, underneath the pad there.

Q Do you have that, Mr. Truta?

A Yes, I do.

Q I asked you did you have a certain percentage that you could allow for the dealer or did you have a certain dollar amount – I'm sorry. Let me back up a little bit. From your answer, what I understand is that the dealer would make a request for a particular concession amount on a given deal and you had authority to go up to – how did you determine when your authority would be cut off? Did you have a certain percentage that you would allow for the dealer or did you have a certain dollar amount? How was that determined? Your answer was it was determined by model. I said all right. And the model of trucks, and the number of trucks are the two determining factors. Then I asked you, and those are the only determining factors at that [563] time? Do you mean for like my authorization? I said, yes, sir, and your answer was yes, wasn't it?

A That is correct.

Q Did the process of dealing with the concessions change after there was a change in the operating concept?

A No, sir.

Q Thank you. And, again, in determining the two – you look at the two determining factors in determining the amount of the concession is the volume of the trucks. Those factors are the volume of the trucks and the model of the truck, is that correct?

A Those are some of the factors, yes, sir.

Q Those are the two biggest factors, aren't they?

A Not necessarily. No, sir.

Q Okay.

A What I was referring to there was my guidelines on the matrixes we've seen are based on the number of trucks and the models of trucks. That's what I was referring to in that phrase, sir.

Q Okay. And my question just now was, the two biggest factors are the model, the model and the number or the volume of trucks in a deal?

A Not all the time.

Q You disagree with that?

A Yes, sir, I do.

Q Let me refer you to page 184 and 185 of your deposition. [564] Now, we've heard this before, but I asked you a question. Can you I guess sort of tell me how you weigh those factors? You're talking about these factors.

A Oh, the very bottom of the page?

Q Yes, sir.

A Okay. I'm with you now.

Q And you said it really varies from deal to deal. As I said before, obviously, the size of the – the order is probably the biggest factor. That's what you told me, right?

A Correct, sir.

Q And also the model is a big factor, isn't it?

A Yes, sir.

Q I said it was a big factor then and it's a big factor now, isn't it?

A Yes, sir.

Q That holds true even after you might seek additional authority at Greensboro, is that correct?

A That's one of the factors; yes.

Q Well, the factors, even after you submit this on – two of the big factors are the volume of – the number of trucks in the deal and the model, is that right?

A Those are one of – those are both factors of many, yes, we consider.

Q Okay. Now, during the time that the Volvo organization was set up in terms of regions, explain to me the hierarchy of how

* * *

[568] A Yes, sir.

Q Okay.

A Once again, depending upon the situation, depending if the – in my estimation if it was in my guidelines, that the dealer probably needed more to be competitive.

Q Can you recall any times where you specifically suggested to Reeder-Simco that you could, you could maybe allow for a higher concession than was requested?

A I don't remember a specific time, but that occurrence might have happened.

Q Was Des Fuller – were you involved in setting objectives for Volvo dealers?

A Yes, sir.

Q And was Des Fuller also involved in setting the objectives?

A Yes, sir.

Q Would you agree that the sales objectives which had been set by Volvo were truly a level of truck sales that a dealer should reasonably be to attain?

A Reasonable? Yes, sir.

Q Was there a consequence to not meeting objectives?

A Yes, sir.

Q In the case where you may have a Volvo dealer who might not achieve a full objective but was close, would that dealer necessarily be placed on probation?

A Not necessarily. There's other factors that would put the

* * *

[Testimony of Willard Charles Coffron]

* * *

[727] introduction of Defendant's Exhibit 148.

THE COURT: Any objection?

MR. BYARS: Is that the same as Plaintiff's 69?

MR. WILLIAMS: It may be.

MR. BYARS: Plaintiff's 69 is admitted, isn't it?

THE COURT: Fine. I'll admit this as Defendant's Exhibit 148 then, which is a duplicate of Plaintiff's 69.

Q Okay. Mr. Coffron, this policy says that its purpose is to define clearly how Volvo Trucks North America will operate in the area of requests for retail sales assistance and that's what we sometimes or you sometimes call concessions informally, correct?

A They renamed it; yes.

Q Under the policy itself, make this a little wider, it states VTNA, as a producer and distributor of commercial vehicle trucks, may from time to time provide additional retail sales assistance in addition to the published dealer net and manufacturer's suggested retail pricing. The assistance was formally termed concessions and is now referred to as retail sales assistance or RSA. RSA is provided as required to meet competitive situations. Now, let's just drop – let's stop right there for a moment, and tell me in your experience why is RSA or concessions – are they required to meet competitive situations?

A Because every truck transaction is unique. It's different. It's not a – it's not a car deal. It's a – there's too many variables in the sale to provide a single source discount level.

[728] Q And when we talk about meeting competitive situations, what about the competitive situations from other brands? Is that something – a form of competition Volvo faces?

A Absolutely.

Q As in terms of competition is there competition between Volvo dealers or more between brands of trucks?

A Large majority is between Volvo and other brands of trucks.

Q It states that RSA is – well, let me before I get to that, it says VTNA will provide RSA uniformaly as in the case of a specific customer transaction irrespective of customer domicile and in the same manner to all dealers. You understand what that means, sir? What's that referring to?

A I do.

Q Could you explain that for the members of the jury?

A That statement means that if two dealers in different areas of responsibility are quoting the same customer, they will receive the same exact concession, RSA.

Q Right, and then it says that RSA is granted to dealers with the understanding that the specific competitive situation, customer name, and description, as listed in the dealer written request, is in fact the ultimate end user buyer of the vehicles, and to whom the vehicles will be warranty registered. Why is that important?

A It's to prevent a dealer from calling on a large fleet transaction customer and getting a high RSA level and then [729] retailing the trucks one by one to – in a situation where they wouldn't need that much money to meet competition.

Q Okay. And then in the next paragraph it says dealer leasing companies are an important part of VTNA's overall business objectives, and as such, dealer full service leases are treated as retail transactions. What is a full service lease?

A That's – the ownership of the truck is usually maintained by the leasing company. It's rented on a mileage and monthly charge to the customer.

Q Okay. So does that include normal maintenance so the person who's leasing the truck doesn't have to pay for the normal maintenance?

A It's just a rental factor.

Q Okay. And are those an important source of sales for Volvo?

A They are.

Q On page two of the policy, it sets forth the procedure. And it states all – when – I'm sorry. When requests are made for RSA, it is the responsibility of the requesting dealer to supply all pertinent information, including but not limited to, and then lists several things. I'd like to ask you about some of those. Customer name and location I think are probably fairly obvious. The equipment specifications. Why is that important?

A Because you can vary on the same piece of equipment depending upon the components specified engines, rear axles, transmissions, cab size, by thousands of dollars on the same [730] truck.

Q So if you have the same model truck, depending upon how it's equipped, there can be a variation in the price?

A Absolutely.

Q Have you at my request prepared a sample specification to show the potential price differences in trucks?

A I have.

Q Let me show you what I have marked for identification as Defendant's Exhibit No. 89-A. Can you identify that document, Mr. Coffron?

A I can.

Q What is it?

A This is what I prepared to show the difference in option pricing so that you could select on a truck.

MR. WILLIAMS: Okay. We move for the introduction, Your Honor, of 89-A?

THE COURT Any objection?

MR. BYARS: Let me see it, please.

MR. WILLIAMS: Sure.

THE COURT: Could I see the attorneys at barside here?

(The following proceedings were had at the Bench between Court and counsel and out of the hearing of the jury:)

THE COURT: I don't know how much longer you're going to be, but I don't think we're going to finish

with him by 6:00. We have got some weather reports, apparently the rain has turned

* * *

[732] THE COURT: Let's go ahead and get this out of the way. That won't be any big deal.

MR. WILLIAMS: Sure.

(The following proceedings were had within the presence and hearing of the jury:)

Q Mr. Coffron, can you just explain to me briefly how you went through and prepared this potential price difference for the trucks of the same model?

A Sure. In each one of those categories, and I only picked out the major components in most cases.

Q You need to see it, sir?

A No.

Q Okay. Thank you.

A You can select our standard which is a no charge cost, or you can select an option up to that price level that I gave you, a retail. That wouldn't be the customer's final price. That would be a retail suggested price.

Q These are retail prices only. Okay. With that, Your Honor, I would move for the introduction of Defendant's Exhibit 89-A.

THE COURT: You wish to voir dire, sir, on that Exhibit?

MR. BYARS: No, Your Honor. I'll just reserve cross.

THE COURT: Fine. It will – do you have an objection to the Exhibit then?

MR. BYARS: No. I'll cross examine.

[733] MR. WILLIAMS: Okay.

THE COURT: It will be admitted without objection as 89-A.

Q Okay. This is the document 89-A. I just wanted to briefly run down there, and for the members of the jury, on the left hand, it shows a base chassis for a 2001 VNL64T 660, correct?

A Yes.

Q And it says base chassis $97,014. What is that?

A That's our standard.

Q Okay.

A You would get a truck at that price.

Q Okay. And then there are two columns. One's called low and high, and then it starts with engine, and then it goes down there and the engine, it just has an example. It's a zero up to a high of $10,911. What does that represent, that price, sir?

A The zero is our standard, engine's included. You can option up to an engine that costs 10,900.

Q Okay. And there are other things listed under engine. Are those all engine-related components?

A They are.

Q Okay. And the transmission ranges from 211 to $1,432.

A Right.

Q And, again, there are engine options there, transmission options?

A Transmission options; yes.

[734] Q We can work our way down. There's a rear axle from zero to 3100. A rear suspension can go from zero to 2400. Just going to the bottom line. After you pick all the options from the low to the high, what is the final difference that's between the options noted?

A 44,000.

Q Okay. Well, one's 44,082 and the other is $371, right?

A Right, $43,000 difference.

Q All right. That's the same model, correct?

A It is.

Q And if you were going to see it going down the highway, maybe you could tell, but would most of us be able to tell the difference in that model?

A No. Most of you wouldn't be able to tell the difference.

Q Okay. Back to Plaintiff's, excuse me, Defendant's Exhibit 148, your own equipment specifications, it says timing of purchase. Why is that important?

A The timing of the purchase can be important for a couple of reasons. One, if we need orders at that particular

time, if we have holes in our order board that we need to fill, it can, it can affect the finance rates. It can affect the lease rates if they are involved.

Q And then it says complete details of the transaction and lists several items with arrows out there. Are those factors which are considered, each of them?

[735] A Right.

Q Trade information. Why are trades important?

A Because we are probably going to have to either purchase the customer's current fleet or find a buyer for that fleet.

Q We already talked about financing. Over allowance?

A Over allowance is if his current fleet is on his books for too much money, we may have to throw or put money against those trades just to get them off of his books.

Q What does pricing strategy refer to?

A I don't know what it means in that context. I didn't –

Q Okay. All right. That's fine. Price levels, what does that refer to?

A Price levels. We, we – you have to have – we have about three or four price increases during the year. You have model year change, which creates different pricing, so you have to make sure that when the deal goes in it's at the current price level in the data book that you're using to specify.

Q Delivery requirements?

A Delivery requirements. If it's as soon as possible built, if it's as quick as we can build them and deliver them, that's the cheapest transaction to handle. If he has spread delivery, he can spread delivery on a large fleet over a year which creates higher costs.

Q Last purchase information?

A Last purchase information is usually to find out about [736] competition components used in his truck.

Q Extended warranties?

A Those are – we have to charge for extended warranties or get them issued by the component suppliers.

Q Local vendor contributions, what's that?

A The major suppliers usually have area distributors. The engine manufacturers all have distributors that they use for their products and sometimes those distributors are interested in getting their products into that fleet, too, and will offer monetary assistance.

Q How does that affect the concession rate?

A It can lower the concession rate.

Q Local installations?

A A customer may require something on his product that we don't offer at the plant. The dealers will arrange to have that installed on the tractor and then pass it along.

Q And it's not listed on here, but are you familiar with the term Conquest account?

A I am.

Q What is a Conquest account?

A Again, it's like a target account. It's someone that we have decided we want to do business with.

Q Okay. So how does a Conquest account affect pricing or can it affect pricing?

A We can make a very attractive pricing for a Conquest [737] account.

Q I'm not sure conquer is the right word. If you conquer a customer and you sell to them, at that point, and they become a long-standing customer, then how does that affect your pricing?

A Well, it kind of sets the bar that we have to work off of from year to year.

Q What about other competitors? Are there other competitors out there as well?

A Same thing, they do the same thing to us. If we have a long-standing relationship with a customer, we know that our competition is going to go to high concession levels to get that customer away from us.

Q Okay. What about the season of the year? Is that ever a factor in concessions?

A It is for most manufacturers. They have high production activity during different seasons of the year. Vocational markets, being dump trucks and construction trucks, are always strong in the spring. They may lower concessions. People that are strong in that business might lower their concessions during that time because their plants are full.

Q In terms of the equipment and engines particularly, if you can sell a Volvo engine with a Volvo truck, does that have any effect on the pricing?

A It does.

Q How is it affected?

[738] A We can, we can make that a more attractive deal only because we're supporting the trucks with parts and service, which we want.

Q I'm going to show you what I've marked, excuse me. I think it's already in evidence as Plaintiff's Exhibit 94.

THE COURT: Holly, it's getting hot in here again.

MS. PORTER: It is?

Q You didn't identify Plaintiff's Exhibit 94, Mr. Coffron. Are you familiar with this document?

A I'm familiar with this type of document.

Q Okay.

A It's a Field Sales Force Retail RSA Assistance Guideline.

Q And have there been similar Guidelines in effect for a number of years?

A Yes.

Q It's shown at the top the various models and it shows retail sales allowance by authority level, one to two, three to nine, 10 to 25, greater than 25 to 49 and over 50, correct?

A Right.

Q This is what's referred to as a matrix?

A It is.

Q It says, and let me enlarge it so we can all see it from this copy. It says these levels indicate the maximum authority for the indicated model and volume. Accordingly, deals quoted by regions should not all receive maximum RSA?

[739] A Right.

Q Can you explain that?

A The guideline is established based on the production costs, on average production costs for your product line, so its a big pool and we decide how much it costs to build those trucks by model and by Volvo's targeted profit level they want to reach on each truck, so the averages are then issued to the field for competition. We would like the district managers and the field sales people to sell under those guidelines. We encourage it.

Q How does the matrix work in general terms?

A Field sales managers have the authority to grant those concessions or those RSA's to meet a competitive situation and take the deal down.

Q And we talk about field personnel. Who would that be?

A District sales managers.

Q Okay. And what about the Regional Vice Presidents, do they have authority?

A They do.

Q What authority do the Regional Vice Presidents such as yourself have?

A It varies. This one's printed so that I can use that whole matrix in one deal to, to complete a deal. I don't have to stay within any one of those columns.

Q Okay. It says down at the bottom guidelines for additional considerations, types of transaction. It says retail sales [740] allowance up to published guidelines, specific authority, Regional VP, correct?

A Correct.

Q And that's what you're referring to?

A Yes.

Q And this is the same type of document you said that Freightliner and Sterling have?

A Yes.

Q And the numbers wouldn't be the same?

A No.

Q But the concept would be the same?

A Right.

Q And would theirs also be used by the people in the field?

A Yes.

Q Would it be a reasonable thing, a reasonable business judgment on the part of Volvo to disclose the matrix to all dealers in your opinion?

A No.

Q Why not?

A First of all, we could never come up with a single discount level that would meet all the competitive situations that are in the field. Secondly, as soon as we distributed this form to our dealers, it would be in our competition's hands. Volvo would never get another deal. We would lose business.

Q Why would it get to or how do you think it would get to your [741] competition?

A We have a lot of dealers that have dual franchises.

Q What do you mean dual franchise?

A They will franchise with another OEM, with another, with Mack, with Navistar, with Freightliner.

Q Okay. And if that dealer got it, how could he use it if he so chooses?

A He could just call in – he could make an appeal off of his concession sheet and say this is where Volvo is on this deal. I need $25 more.

Q And you said we would never get another deal. Could you elaborate a little bit?

A Our numbers would be out in the field. We wouldn't be competitive anymore.

Q Okay. Why is that important for Volvo to not have your numbers out in the field where everybody knows them?

A Because we're not, we're not using the same numbers on every deal. Everyone is unique and we've got customers we don't have to go as deeply to maintain.

Q Is it – would it be a reasonable thing to give the maximum concession on all deals as a business proposition for Volvo?

A No.

Q Why not?

A We need to – we would need an average of concessions out in the field to maintain profit, large overheads to cover.

[742] Q In order to achieve the financial goals and projections of Volvo, do you have to have some deals that come in under these maximums?

A We should have; yes.

Q What percentage of transactions or proposed transactions do you need that are off the matrix in terms of either the size of the deal or the percentages that are being requested to meet a competitive situation?

A That matrix in today's market at about ten trucks, you can't use that matrix.

Q Why not?

A Competitive situation. It's deeper than that.

Q And why is that today?

A Over capacity.

Q Okay. The market is down and –

A It is.

Q My question was, to follow up then, do you have a feel for what percentage of deals you see that are off the matrix?

A Probably 60 to 70 percent are off the matrix.

Q Okay. And when we say it's off the matrix, what does that mean as a practical matter? What happens in consideration of that deal?

A If it's found to be non-competitive under the guidelines that we've issued, there's an appeal process. The dealer can request – the dealer or the field district manager can request a

* * *

[761] Q Last Friday we had some discussion I believe it was of Defendant's Exhibit No. 148, which I believe is the same as Plaintiff's 69. Do you recall looking at this last Friday?

A I do.

Q I'd like to first of all direct your attention to the second to the last paragraph here dealing with dealer leasing companies. It says dealer leasing companies are an important part of VTNA's overall business objectives and as such, dealer full service leases are treated as retail transactions. These transactions must be full service leases. Any instance where a dealer represents an RSA – we need to get these acronyms straight. What that means is any instance where a dealer represents a discount or concession, is that correct –

A Right.

Q – as a dealer full service lease, is that correct?

A Yes.

Q And, in fact, uses it to obtain additional concession or RSA for a retail sale, versus a full service lease, is considered a misrepresentation of the transaction. The ultimate end user must be included on the RSA or discount request at the time of submission, and the units must be warranty registered in the leasing company name, is that correct?

A Right.

Q It states that any change in the status of the ultimate purchaser including misrepresentation of the full service lease [762] customer of a specific vehicle as listed in the RSA or discount request gives cause for VTNA to adjust, modify or otherwise deny payment and/or charge back to dealer a portion all of the amount granted, is that correct?

A Right.

Q So if we have a dealer leasing company, first of all, tell me what that is? What is a dealer leasing company?

A We were encouraging dealers to start a leasing, internal leasing company to compete with the major leasing companies. A large portion of the class eight market is under a full service lease contract. We wanted them in that business.

Q So if a dealer has its own leasing company, that's what this policy refers to, or speaks to, is that correct?

A Yes.

Q And so in those cases where there is a dealer-owned leasing company, does this policy mean that the concession request or the concession request amount is treated the same as if it is a – the same as a retail sale to the identified underlying end user?

A Not generally.

Q And explain then how this works.

A The leasing companies, we actually separated leasing companies from the retail concession in the amount or in the theory that we would get a certain amount of business through that leasing company on an annual basis. We looked at that nationwide and set concession levels or RSA levels based on how [763] many trucks we expected to get. They were standardized usually across the country.

Q Does this not allow for some type of a charge back if the dealer leasing company misidentifies the end user?

A If the end user is misidentified, it – we had the ability or the authorization to charge back concession, yeah.

Q Okay. Well, the policy says that's what will happen. Right?

A Yes. The only case I can think of that not happening is if the leasing company or the ultimate customer cancelled the unit. There was no fault of the dealer.

Q So that you're carving out as some exception to this policy?

A Yes.

Q Okay. The policy doesn't say that, does it?

A No.

Q In your testimony I believe – did you make a statement that the RSA or the concession methodology used at Volvo actually allows Volvo to sell at a higher profit to someone who will pay more?

A Yes.

Q So depending upon the circumstances, if you might have some customer who is willing to pay more, there might be a difference in the concession level that you grant to a dealer?

A Each deal is an individual specific transaction. It's, the concession level granted was usually based on the competition [764] that we had to meet. We have competition on virtually every deal we quote.

Q Is it a true statement that at Volvo the district sales managers are compensated in terms of salary and bonus?

A They are.

Q And as part of the bonus compensation to a district sales manager, do they receive a bonus based upon the volume of trucks they sell?

A Volume and gross profit.

Q Volume and gross profit.

A And Volvo engines.

Q All right. At the same time Volvo encourages the district sales managers to try to sell these these trucks at

a level which is below their concession authority on the matrix, correct?

A We encourage them to stay below the matrix level, yes.

Q All right. Such that it's foreseeable, isn't it, that a district sales manager may desire to obtain volume with respect to one of his dealers and try to obtain profit margin to another with respect to another dealer?

A No, because that would be – that would have to assume that we didn't want larger deals at every dealer and we did.

Q All right. Now, the district sales manager, what portion of his bonus is based upon the volume of trucks?

A It fluctuates year to year, depending upon the corporate objectives, but it's usually set up 40/40/20 percentagewise.

* * *

[768] the same customer, no matter how many dealers were involved, we would equalize the RSA to all the dealers quoted.

Q In other words, that's an obligation of Volvo is to equalize the concession amounts. Would you agree to that?

A I would for the same customer.

Q Just for the same customer?

A If it's identified as the same customer.

Q Does Volvo make any effort to try to equalize the concession amounts when you're not dealing with just the same end user?

A No.

Q Thank you. You stated, I believe, that as a Regional Vice President working for Volvo, that you had the authority, unlike a District Sales Manager, to in looking at a transaction that might fall under the matrix, as a Regional Vice President, you had the ability to bump the RSA without regard to the volume of trucks stated on the matrix, is that correct?

A Yes.

Q Mr. Coffron, did you view the sales objectives set by Volvo to be reasonably attributable or reasonably attainable targets for the dealers?

A Yes.

Q After the sales objectives were determined and provided to the dealers, were the sales objectives ever adjusted downwards?

A Yes. I'm sorry. Could you repeat that?

Q Yeah. After the sales objectives were determined and

* * *

[771] amounts?

A They are a captive finance company. They may run specials during the year to assist us in sales which would lower interest rates.

Q So are you saying that when a dealer requests a certain level of concession on a particular deal, that the decision makers might grant the dealer a higher concession because they use Volvo Truck finance?

A No. I wouldn't say that.

Q All right. Does it affect concession at all?

A Using Volvo finance?

Q Yes, sir.

A It could affect concessions only in that we could have them finance trades, make the deal easier to put together.

Q All right. So if a dealer has other financing arrangements, doesn't that take the financing factor out of the equation with respect to Volvo?

A Yes.

Q Has the competition in the area of heavy truck sales been at a high level since 1996?

A Yes.

Q And have the profit margins in the heavy truck business been relatively low since 1996?

A They have.

Q Would you agree that a new sales objective for a Volvo

* * *

[Testimony of Michael P. Truta (resumes)]

* * *

[786] A We equalize the concession. In other words, we give them both the same percentage.

Q Now, do you attempt to determine whether there are other dealers bidding on the deal, specifically, if you see a bid that comes in from outside your AOR?

A Yes, sir. We typically – we ask for the home of where the customer is, where they are domiciled, and then we will run a name search to see if there's another dealer on that same deal, and the reason we do that is to protect both dealers so we don't inadvertently give one guy more or one guy less than the other dealer.

Q Explain to us what an AOR is.

A An AOR stands for area of responsibility, and that is a geographic area, typically made up by counties that have been assigned to a particular dealer as their sales area.

Q I believe you also heard Mr. Heck testify I think on cross examination that he remembers maybe two or three occasions where he placed a competing bid against another Volvo dealer. Did you hear that testimony?

A Right.

Q Does that surprise you at all?

A No.

Q Where do you see any competition for Reeder-Simco, however it may be, with other Volvo dealers?

A Typically they would compete with the dealer in Springdale, [787] Arkansas, and there was one occasion where they competed with the dealer in Springfield, Missouri. Besides that, not too much.

Q Did it happen very much even with Springdale and Springfield?

A No, sir.

Q Earlier you were talking about the different items that you evaluate for the deal. In your opinion, what would happen if Volvo could not adjust its prices to meet competition or based on these other factors?

A We get very, very few deals.

Q And why is that?

A You couldn't be competitive. It's a fluid situation. It's not black and white. Depending upon what happens with the customer, the situation will change. Sometimes the customers will change their mind on how many trucks they want to order. When you're already into the process, they will add or delete. Sometimes they want to change the number of trucks they want to trade or not. That's just one example. They may change time of delivery. They want it now. Maybe they don't want them for a year from now. And that makes a difference in what we can do as far as pricing. It varies a lot, and not having the ability to adjust to that, I just don't foresee us getting very many deals.

Q Would it be reasonable to put one price for one model of truck based solely on the quantity of the truck?

A No, sir.

[788] Q And why not?

A Once again, we wouldn't get any deals. It's not, it's not black-and-white-type of situation.

Q As far as pricing is concerned or the level of concession that tiy may be able to give, can the matter of a month change that situation?

A Absolutely.

Q And can you tell me about that?

A Well, a month's difference could make a difference depending on model year, 2002 versus 2003. It could make a difference in where the factory is in building trucks as far as our order board. Do we have a leaner order board or do we have a bigger order board?

Q Let me ask you this: What if – assume that Volvo's order board was fairly low, how would that affect?

A Well, we would probably be more aggressive in our pricing or concession level because if it was a difference between either sending people home and keeping them working, obviously we want to keep them working.

Q And when you say sending them home or keeping them working, who are you talking about?

A I'm talking about the workers on the lines, the factory workers themselves.

Q That build the trucks?

A Absolutely.

[789] Q Can the level on the order board change fairly quickly?

A Yes, sir.

Q Let's shift gears a little bit and talk about your dealings with Reeder-Simco. In your experience with Reeder-Simco how would you describe them as a Volvo dealer?

A For the most part I would say that they were not overly aggressive. They tend to do like fleet deals more than the smaller onesy-twosy type of deals. They were a General Motors light/medium duty dealer and that seemed to be their main thrust and their main focus, and Volvo seemed to be a secondary product with them.

Q I want to put up on the overhead what has been admitted as Defendant's Exhibit 127, and can you identify that document for the jury?

A Yes, sir. It looks like a contact report that I made after my – I believe is that May of 97 up there? Yes. That was probably my – yeah, it was my initial call, my first call on them as a DSM to visit the customer, visit Reeder-Simco.

Q Let me direct you to – on the second page of paragraph seven. I'm sure I can put that where we all can see it. Can you read paragraph seven for us, please?

A They have a big enough medium duty base in Ft. Smith that they could survive without us, Bill said. That wasn't said as a threat, but more a statement, Bill said that they want class eight and are a lot more profitable because of class eight.

* * *

[801] I'm doing it now. I'm going to admit these Exhibits over your objection, 268, 269, and 270. I will permit you to

cross examine, if he's aware that you requested all of these before and that they weren't made available to you. You can ask that question.

MR. BYARS: Okay.

(The following proceedings were had within the presence and hearing of the jury:)

MR. SHANNON: Your Honor, just for the record, I – 268 and 270 have been admitted?

THE COURT: Yes. I've admitted all of those. I think there were three of them, I believe.

MR. SHANNON: One of those three had previously been agreed to.

THE COURT: Fine. Those are admitted subject to the Court's prior ruling.

Q Mr. Truta, you were in the Court when there was a discussion about Hiland Dairy –

A Yes, sir.

Q – and some allegations that Volvo had treated the Springfield, Missouri, dealer differently than it treated Reeder-Simco for the Hiland Dairy transaction, is that correct?

A Yes, sir.

Q Let me put on the overhead what is marked as Defendant's 268, and has been admitted, and can you tell us what that is?

[802] A That's a concession request from Springfield, Missouri, for 16 VNL 64 T day cabs from January of 99, concession was 7.5 percent.

Q Okay. Now, I notice you said January of 99.

A And the reason I did that, that's a misprint. That was in 99. That deal happened in 99. I think – what I think happened, quite frankly, is when the dealer down there wrote it, it was right after the turn of the year and he was still writing in 98, but the deal occurred, this concession did come in 99.

Q What year model were these trucks?

A 2000's.

Q Would they have been bidding 2000 trucks in January of 98?

A No.

Q Okay. What level of concession was granted to the dealer in Southwest Missouri?

A At the time we gave a 7.5 percent.

Q I'll put what's been marked as Defendant's Exhibit 269 and can you identify this document?

A Yes, sir. That's a request from Reeder-Simco for Hiland Dairy out of Springfield, Missouri, for 12 VNL 64 T day cabs in July, you know, five, six months later. Basically – it was the same deal, and we gave – I equalized the concession at the time, 7.5, which is the same amount I gave the dealer in Springfield.

Q Now, can you tell me what Defendant's Exhibit 270 is?

A That is a concession request dated 8/19/99, approximately a [803] month after on – for Hiland Dairy for 12 VNL 64 T's where I raised the concession an additional $870 or eight-point – it was 18.5 percent to get the – get the order.

Q Can you explain the circumstances of this 8.5 percent increase for the Springfield deal?

A What had happened was this customer, Hiland Dairy, who had previously bought all of their trucks and continued to buy their trucks through Springfield, came to the dealer in Springfield and says, we're now ready to buy, and we want the same price you quoted us back in January of the year. The dealer contacted me, in essence we had a price increase. I ate part of the price increase, and the dealer in Springfield ordered the trucks. It was a kind of a bang-bang-type of deal, and that's why they got the additional dollars.

Q Would the dealer – would the customer have ordered the trucks from Springfield before or after this, this document here of 8/19/99?

A Probably right about the same time.

Q Did you contact Ft. Smith or Reeder-Simco or Mr. Heck about the bump for the price protection?

A No, sir, I did not, and to answer your question, the reason I didn't is because the order had already come in. It was a done deal.

Q A done deal for whom?

A For Southwest Missouri Truck Center, the Springfield dealer.

[804] Q Mr. Truta, did you treat Reeder-Simco any differently than you treated the Springfield, Missouri, dealer on this Hiland Dairy transaction?

A No, sir, I don't think so.

Q There's also some discussion about a deal to Tommy Davidson, and let me put up what has previously been admitted as Plaintiff's Exhibit 135, and can you identify that document?

A That's a concession request from Reeder-Simco for five VNL 64 T 610's.

Q And can you just explain to us the circumstances surrounding these concession requests regarding Tommy Davidson?

A Sure. I think initially they – we gave them 7 percent and you'll see a – it's going to be 17 percent. I'm sorry. And then we bumped it to 8.1 percent, and this says to equalize concession. What happened was I had two dealers on the deal, Springdale, Arkansas, and Ft. Smith. I had two dealers, two sales people working the deal. The salesperson in Springdale called me and basically said, I need some more money on the deal for competitive reasons, so at the time, if my memory serves, Freightliner was our competition, and competitive situation. He felt he needed some more money than what we had initially given them, and I gave it to them, and at the same time I equalized it and I gave Ft. Smith the same amount.

Q Let me put up what was marked as and admitted as Plaintiff's 136, and can you explain to us what this document is?

* * *

[831] concession to be – to make – to obtain sales of trucks, despite their efforts in making bids to customers?

A I have no way of knowing.

Q There were quite a number of bids to customers that Reeder-Simco actually made, which were not brought up by Mr. Shannon which did not result in sales, aren't there?

A There were more? Yes, sir.

Q And you went through and Mr. Shannon went through a number of these concession requests whereby you actually granted the amount of the concession requested, is that right?

A That is true.

Q And with respect to G. Ray Baker when Reeder-Simco requested 10 percent and actually got the 10 percent, they made the sale, didn't they?

A With my help; yes, sir.

Q And I believe in earlier testimony you had indicated that in on some occasions that in granting concession requests, that you would advise dealers sometimes that you could go higher than the amount that they requested, is that true?

A In some cases, depending upon the situation, and once again, every deal stands on its own. If I felt that a dealer was not asking enough depending upon the situation, and because I travel a fairly large geographical area, I have a better feel for what's going on in the marketplace and what the competition is doing, and if I felt the salesman, for whatever reason, maybe he didn't [832] do his

homework or didn't know enough about the account, we would talk and decide maybe, yes, I could go a little bit deeper on a concession, but it would vary on, you know, from deal to deal.

Q With these examples that were brought up by Mr. Shannon, did you recognize anywhere you granted a higher concession than that requested?

A I don't think so.

Q Okay. I believe that you've had some discussion with regard to Defendant's Exhibit 128 which was admitted, and that pertains to the comment here about Reeder-Simco not being able to keep exclusive class eight salesmen. Do you see that?

A Yes, sir.

Q And this was a memo to who?

A Contact report, looks like I sent to David Winner.

Q David Winner. Who's Mr. Winner?

A He's in our dealer operations group.

Q And wasn't Mr. Winner the guy with Volvo who was sort of in charge of this responsibility of determining which dealers were going to be terminated or cancelled?

A You'd have to ask him.

Q Well, what was your purpose in sending this memo to Mr. Winner?

A If memory serves, this was – I was asked to, once again, once the lawsuit came in, asked to keep our dealer

operations people apprised of any contacts I made with the dealer.

* * *

[835] (Off the record at this time.)

Q Did you earlier make some kind of comment concerning Reeder-Simco, Reeder-Simco's representation of the VNL 770's?

A I'm sorry. I'm not sure I'm understanding your question.

Q Did you in your direct testimony by Mr. Shannon talk about VNL's commitment to the 770?

A I talked about Volvo's commitment to the VNL product which would include the 700, the 660, the 610, the 420, if that's what you mean.

Q All right. And was there any comment or criticism by you with regard to Reeder-Simco's efforts on selling the 770's?

A I don't remember any particularly.

Q Do you recall Reeder-Simco having the first largest orders for the VNL series to Hiway Express, about 80 trucks?

A That order came in – yes, I do remember it; yes, sir.

Q This memo says just a short note regarding subject dealer. In my visit there –

THE COURT: Why don't you make it a little larger and that way maybe we can read along with you.

Q Just a short note regarding subject dealer and my visit there on 3/25/99. Dealer currently has about 11 units including eight or nine 770's in stock and about ten more on order. Trucks are well displayed at the heavy duty annex, which would not be a bad-looking dealer location if they had an active parts department, a mechanical shop, as you know the shop there now is [836] strictly a body shop. The dealership currently employs two fulltime medium-duty salesmen in addition to Bill Heck who handles key fleet accounts. As you know, the purpose of our visit was to call on USA Trucking. This account was a Volvo account at one time, and five years ago or so went to Freightliner. Is that what FRT, you think that's what that would mean?

A Freightliner, yeah.

Q Due largely to the company's shortcomings in product, financing and dealer support away from the Ft. Smith area. We have the opportunity to quote 563 units for delivery next calendar year. At this point this is a dealer transaction and we do not foresee changing it to an MSA or national account deal. The dealer has a good relationship with key players and knows the operation well. In an effort to improve customer support, the dealer has agreed to extend its service hours should we be successful in placing some, would that be units?

A Yes, sir, probably units.

Q Dealer support is a key issue with the customer, not only in the home market, but in terminal locations in Shreveport, Dayton, Ohio, West Memphis, Arkansas. I don't know the situation in Dayton, but we have a potential problem in Shreveport and should make a deal with USA. We might need to go to the Rush Group to set them

up as a parts and service dealer. No need to do that unless and until . . . then Mr. Fuller says while I am in [837] concurrence that as currently structured Reeder-Simco is not a long-term dealer, we do need a dealer in this market, and given the options, they appear to be to the only game in town for exclusive representation. Do you see that?

A Yes, sir.

Q Why would there be discussion between Mr. Fuller with a copy to you about Reeder-Simco not being a long-term dealer?

A I really don't know, sir.

Q Who was Barbara Rossetti?

A Barbara Rossetti was a person in our Dealer Operations Department who had responsibility for several regions including the Southwest Region at the time.

Q Okay. And Barbara Rossetti was one of the persons responsible for sending out these deficiency cure status and notifying the dealer that they're not meeting their objectives and that type of thing, is that right?

A I believe that was one of her responsibilities.

Q In this memo where Mr. Fuller says that he concurs that Reeder-Simco is not a long-term dealer. That was in March of 1999, is that right?

A Yes.

Q Does that indicate to you that some kind of a decision was made as to Reeder-Simco prior to December of 1999?

A I can't say what that really means. You'd have to ask Dez Fuller what he meant by that. (Pause)

[838] Q With regard, again, to USA, I'm going to refer you to Plaintiff's Exhibit 336, which I believe has been admitted.

MS. PORTER: I thought the Defendant had an objection. Is it admitted or –

Q This is a memo. It says reason for contact, Dez Fuller, Mike Truta, Bill Heck and writer met with Robert Powell, Mike Davis to deliver a sales presentation on VNL fleet, had run some WIA product, but has been all – what is FLD?

A Freightliner.

Q For several years. Mr. Powell stopped the presentation once he saw pricing. He did state that we were competitive versus Century Class, but much higher than Freightliner pricing.

A Actually that FLD, it was a model of Freightliner.

Q All right. Overall Heck seems to have a good personal relationship. Follow-up activity planned from Chris Patterson, is that right?

A Yes, sir.

Q Who is Chris Patterson?

A Chris Patterson at the time was the senior VP of Sales and Marketing, I believe was his title.

Q And is it true that Mr. Powell stated that one of the main objections they have on Volvo is the pricing?

A In that particular case it was.

THE COURT: What was that Exhibit, No. 336?

MR. BYARS: 336, Your Honor.

[839] If I can refer you to Defendant's Exhibit No. 196, there was on – this was Reeder-Simco's concession request on Danmar Transit, is that right?

A Yes, sir.

Q Did you have knowledge that Reeder-Simco was making efforts to sell Danmar Transit prior to this concession request?

A Yes, sir. I remember going and visiting with one of the salesmen from the dealership.

Q So you had a visit with Reeder-Simco's salesman. You actually met Mr. Bearden?

A I can't remember the gentleman's name, but I remember that he was introduced to me as the decision maker.

Q All right. And in this particular instance, Reeder-Simco requested 7.84 percent concession?

A Yes, sir.

Q Most of the time do you receive a concession with that specificity?

A Typically, no.

Q Okay. Does that indicate to you that Reeder-Simco knew right where they needed to be in order to win that business?

A Not necessarily.

Q Are you aware of other Volvo dealers in the same timeframe receiving a higher concession with respect to around the same timeframe, same model, same quantity of higher than 7.84 percent?

A That's possible, depending upon the situation.

[840] Q Now, back on this Hiland Dairy transaction, I believe that you said that what you did here with Defendant's Exhibit No. 268 is that you gave 7.5 percent concession in order to equalize pricing. Is that what you said?

A What I said was that – that was the initial deal. The dealer in Springfield was on the deal first. Then Reeder-Simco came on the same deal, even the quantity was a little bit different, actually was reduced a little bit on the Reeder-Simco deal to I think 12 trucks, was basically the same deal. I went back and gave Reeder-Simco the same 7.5 percent I had given Springfield when they submitted their concession request.

Q Well, this is – this does say January 15 of 1998, doesn't it?

A Yes, sir.

Q But you testified that you thought was it was in 1999, right?

A I believe it's in 99.

Q Do you have any – do you know?

A Well, the fact that he was asking for a 2000 model pretty much indicates what the case is.

Q Okay. If this is January 15 of '98, when was it?

A No, 99, sir.

Q I'm sorry, 99. Well, it's January 15 of '99. Let's assume that. Okay?

A Okay.

[841] Q 7.5 percent given to the Missouri dealer, but it would seem to be – what we need to do is look at the date of Reeder-Simco's request, and this is Defendant's 269. Reeder-Simco's request was July 21st of 1999, isn't it?

A Right, and I gave them both – I gave them the same 7.5 I had given Springfield.

Q Okay. About six months earlier?

A Yes, sir.

Q Okay.

A The deal hadn't –

Q So what does that have – what does that say with regard to this difference that a month or two might make with regard to granting concession? It doesn't apply here, does it?

A Probably in this case, no, because the customer – what Hiland Dairy wanted to do it took that long to make a decision.

Q Well, here we are at July 21st of 99, 1999, 7.5 to Reeder-Simco.

A Uh-huh.

Q And I think the point is July 21st and August 19, on August 19 you granted 8.5 percent to the other dealer, didn't you?

A Correct.

Q Is there any documentation or any proof that you granted Reeder-Simco 8.5 percent concession on that deal?

A No, sir. And the reason I didn't is because by that time [842] the deal was done.

Q When you bumped it up to the 8.5 percent to the other dealer, they made the sale?

A Yes, sir. It was a boom-boom-type of deal.

Q It was too late for Reeder-Simco to have a chance, right?

A If memory serves, the dealer from Springfield called and said I got the order, the customer will take it under this provision. I'm sitting in his office. Can you take the deal? Yes, I did, got the order. The order went in on either that day or the next day. So in essence it was a done deal. There's no need to call Reeder-Simco, because the order had already been placed.

Q On the, I believe it was Defendant's Exhibit – Plaintiff's Exhibit 148, you talked about the REC Transport concession request?

A Yes, sir.

Q And how you thought the dealer didn't or the salesman didn't know what he was doing because he quoted 21 percent.

A Yeah. I felt at the time that Greg Bader, who was basically a – spends most of his time on medium duty asked for a concession that was, you know, way out of line.

Q Well, was there a price change in 1998?

A Yes, but this is – the timing really wouldn't explain that.

Q Also, with regard to ARL, we discussed the fact that when Reeder-Simco requested 3 percent, you gave them 3 percent on that [843] transaction, right?

A That's what appears so; yes, sir.

Q Now, let me know show you Plaintiff's Exhibit 184. It's also the ARL, but it was for – this appears to be a bid about six months later, February or longer than that, it's about eight months later, February of 1999 –

A Uh-huh.

Q – where Reeder-Simco requested 10 percent and what was granted?

A 4 percent.

Q If I may have just a moment, I think I –

THE COURT: Yes, you may. (Pause.) Back on the record. Mr. Byars?

BY MR. BYARS:

Q Just a couple more questions. On this Danmar Transit transaction, this is Reeder-Simco's concession request. In this transaction there were no trades, were there?

A No; no, sir.

Q And the sales had a fairly high probability, is that right?

A That in the dealer's estimation, the salesman's estimation; yes.

Q There was a potential for additional sales, it being 60?

A I think that was the size of their fleet; yes, sir.

Q There was no consideration, I guess, with respect to any kind of over allowance or anything like that, was there?

[844] A I don't believe so.

Q All right. And basically it's just a pretty clean deal as far as these factors that you mentioned are concerned, isn't it?

A Clean deal? I wouldn't characterize it that way, but, you know, give you an example, you mention there that the competition was International Harvester, which is usually pretty tough competition to it, so that would be a factor I would consider in the equation.

Q This would also be a Conquest account for Reeder-Simco, wasn't it?

A And for Volvo, too.

Q All right. And so all of these would weigh in favor of granting a higher concession for Reeder-Simco, right?

A Yes, sir.

Q And why would you, instead of issuing 4 percent initially, why didn't you just do that to begin with instead of going back to Reeder-Simco and saying 4 percent and leaving it up to Reeder-Simco to try to plead the case and get an additional percent?

A Well, chances were 4 percent was my, my limit on that particular model and that particular quantity in

accordance with our matrix, and, you know, it's not that the competition tells you where their price is. We go in with a number we think is competitive. Sometimes we are successful and sometimes we're not. And then we'll go back and, you know, bump it or negotiate [845] with a customer and see if we can do a little bit better. There's a lot of give and take in a deal is what I'm saying.

Q In this particular case though, didn't Reeder-Simco inform you of what the price needed to be in order to win the business?

A They asked for 7.84. I'm not sure if that's exactly what was going to take to get the deal or not. I don't recall.

MR. BYARS: Okay. Pass the witness.

THE COURT: Any redirect?

MR. SHANNON: No, Your Honor.

THE COURT: You may stand down. Ladies and gentlemen of the jury, I sometimes encourage attorneys to do things and then maybe I don't compliment them enough when they do do it, but this particular witness, the attorneys do have the Court's appreciation. You will recall he was called last week as a witness for the Plaintiff and then was cross-examined briefly, and today he's been subject to calling as a direct witness on behalf of Defendant and cross-examined by the Plaintiff. In large part they did not ask the same questions they had asked before and that – they have my undying appreciation for that. We are going to take I think just an hour for lunch.

MR. WILLIAMS: Excuse me, Your Honor, before we recess the jury, can we approach the bench on a scheduling issue, just briefly, if I might?

THE COURT: Yes, yes.

MR. WILLIAMS: I think it may help the Court and the

* * *

[850] THE COURT: No objection? That will be admitted. Call your next witness, please.

MR. WILLIAMS: We call David Winner.

THE COURT: Come around, please, Mr. Winner.

DAVID EDWARD WINNER,
DIRECT EXAMINATION, DULY SWORN

BY MR. WILLIAMS:

Q State your full name, please, sir.

A David Edward Winner.

Q Mr. Winner, where do you live?

A I live in Chapel Hill, North Carolina.

Q And where are you employed?

A Volvo Trucks North America.

Q How long have you worked for Volvo?

A Since August 16th, 1999.

Q When you came to work in August of 1999, were you asked by anyone at Volvo to perform an evaluation of the dealers within the Volvo network of the Volvo dealer body?

A Yes, sir, I was.

Q Before we get to that, let's talk just briefly, what are the duties and responsibilities of the Dealer Development Department or area within Volvo?

A The Dealer Development Group looks at the dealer network which distributes probably the bulk of the trucks and parts that Volvo sells. We look at how the dealers are doing. How they present theirselves to the customers, how they represent Volvo, [851] and also we look at their performance which is the determining factor if Volvo is successful as an ongoing business.

Q Prior to August of 1999 had you had any involvement in reviewing Volvo dealers or evaluating their performance?

A No, sir.

Q After you were hired, you said you were asked to review the performance of certain Volvo dealers, what was your purpose in evaluating the performance of those dealers?

A We wanted to evaluate our entire dealer network and what we wanted to do was if we had dealers that weren't performing to our standards, we wanted to upgrade the dealer network and once again sell more trucks, sell more parts, sell more engines.

Q Were you looking at the performance of only certain dealers?

A No, sir. We looked at the performance of all the dealers as a group.

Q How do you evaluate the performance of a dealer?

A The primary three items are truck sales versus objectives, parts sales versus objectives, and engine sales versus objectives.

Q And did you create a document to summarize your evaluation?

A Yes, sir, I did.

Q Okay. (Off the record briefly.) I want to show what's previously been identified and introduced into evidence as Defendant's Exhibit 129-A, and before we get to the content of it, I thought – just would like to zoom in because this is a [852] small document. I apologize to the Court and the jurors, but if we can zoom it in . . . Okay. This is Volvo Truck North America Dealer Business Management Full Year 1999. And I'll try to focus it as best I can on those words. At the top there we have certain columns. Can you just tell me what columns are on there? I'll try to zoom in a little bit closer as well to assist you. Let me refocus. Okay. I'm getting a little bit better. I can almost read that without my glasses. Okay. What are the columns?

A Okay. Going from left to right, the number sign is just is the dealer code. It identifies the dealer. It's, for lack of a better term, our customer number or dealer number. The second column is the region or company from a sales standpoint is divided up into various regions. Within the regions are districts. That's the third column. I'm sorry. I made a mistake. The pound sign was for the number as the ranking. The dealer code is the fourth column actually.

Q Okay.

A The column titled satellites, some dealers have more than one location and we just wanted to identify how many if there were any satellite locations or not.

Q Okay.

A The next column to that is probationary and in that document what that column was it's stated had any particular dealer in the old dealer network been a probationary dealer in the previous, I [853] believe it was three years. The column that says letter sent, we had sent a couple of letters depending upon the status of the dealers, and I believe it notated what date it was. DLROPS is just the dealer operations representative. Although I ran this or I managed this process, there were actually three of us that, or three or four of us, I guess, that handled all of the dealers. And then, of course, city and state was the city and the state of the dealer as we judged the results. Full year truck objective, Volvo sets truck objectives and engine and parts objective by dealer. And that just states what that objective was that was set for each particular dealer.

Q That's their sales objective for the year?

A Yes, sir.

Q Thank you.

A The full year truck actual sales was the actual results versus the objective. And then the next column is a percentage which was just a mathematical equation of how they did against the objective.

Q Okay. And what's the 12/31/99 order board?

A 12/31/99 order board, what that was, we wanted to give full benefit of the doubt to any dealer that may have

had an order in the system where the trucks hadn't been built or something was going to be delivered for whatever reason. If a dealer, for example, fell short, there were a lot of trucks on order, we wanted to be able to visually look at that and make sure we [854] weren't overlooking something.

Q Okay. The next column?

A Full year Volvo power objective. Once again, Volvo also manufactures their own engine, and we set an objective there. And the column beside that is obviously how they performed, what their actual results were, and then once again the percentage, how they did against their objective.

Q Okay. And the next column?

A Full year parts objective. The way we measure parts is also parts purchases from Volvo. It's really the only way we can fairly measure it, I guess, because we sell the parts to the dealer. The dealer in turn sells the parts to the customer. So that's how we measure it. And the parts objective are actual purchases from Volvo. That's how it's measured. That's how the objective is set, and then the next column obviously is their actual performance against the objective, and once more the percent of the objective, so it's a mathematical equation.

Q And what is the last column?

A The last column is where it says 50/50 average of parts and truck objective, what I did, I took all the Volvo dealers at that time, I want to say 167 dealers, and although we have three different categories, truck sales, engine sales, parts purchases, the engine sales are a smaller piece, and the engine sales we originally considered

also doing a third, a third, a third, those three objectives. The only problem with that is some dealers, [855] quite honestly, don't sell any Volvo power. And our main push is really truck sales and parts sales. So that's why, although we noted how much the dealers did on the engine objectives, we truly measured them as we rank ordered 167 dealers, we measured them 50/50 on parts purchases from Volvo and truck sales.

Q Okay. Before you performed your analysis, did you have any prior knowledge of Reeder-Simco GMC, in Ft. Smith, Arkansas?

A No, sir.

Q Did you include any personal opinion or subjective opinions in your evaluation as you did here in your personal opinion?

A No, sir. Actually, I had no personal opinions, and the entire process was objective. It was strictly numbers, because I don't – I, at that time, knew none of the dealers.

Q Okay. Well, let's look at what your results showed. Let me go back out wide for just a moment so we can get – I'll take that off. And does this Exhibit 129-A, does that reflect the results of your analysis?

A Yes, sir. What it is, we rank all 167 dealers and what that page is, that is the dealers, and I can't read the percentage in the bottom right hand corner, but it's just the bottom, the bottom – we went up to that 85 or 95, yeah, we went up to 95 percent objective on that sheet.

Q Okay. Well, let's go back and go back up and see if we can locate Reeder-Simco to make it easier for you and the members of the jury. I've highlighted the line because

of this rather small [856] print, and do you see the yellow line that I have highlighted?

A Yes, sir.

Q And does that represent where the Reeder-Simco dealership placed in this overall evaluation?

A Yes, sir. Of the 167 dealers, they were third from the bottom.

Q Okay. We have the information there we've already talked about, and you have a probationary, yes, 1998. What does that mean?

A Well, basically probationary means that they did not perform up to standard for a particular year. When it says, yes, probationary, 98, that means their performance in 1997 was not up to what our expectations were, so they were put on probationary status for the year 1998.

Q Okay. I'm going to come back to the letter sent column in a a little bit. For Ft. Smith it shows that their full year truck objective was what?

A I believe 85.

Q Eighty-five? And what were their full year actual truck sales?

A It's either 18 or 16.

Q I believe that's 18, if I can make that out.

A Okay. It's 21 percent either way.

Q Okay. So 21 percent of the sales objective that Volvo had set for them is what they actually sold that year?

[857] A Yes, sir.

Q Then you're looking at, for the year end, what was their – were there orders on the order board at that time?

A It looks like two. It was two.

Q And for the Volvo power objective, what was their objective in actual sales?

A Their objective was to sell seven trucks with Volvo power and they sold none.

Q I'm sorry. Seven?

A I'm sorry, 17, and they sold none.

Q But, again, you didn't consider that number in your final analysis, did you?

A In the final analysis, no, sir.

Q Then on parts objective what was their full year parts objective and their full year parts actual?

A Their full year objective was $473,100. And the full year actual I believe is 344,247, which is 73 percent of the objective.

Q And what does that result in when you weigh their parts and truck sales on a 50/50 basis giving equal weight to each, what was their overall objective achievement?

A 47 percent.

Q And is that the number which ranked them third worst of the dealer body?

A Yes, sir.

[858] Q Thank you. Now, after you've completed your evaluation in the Fall of 1999, fall or winter, did you report those findings to anyone else within the company?

A Yes, sir, to my boss, Sam Johnston.

Q And after you reported it to him, were there any further discussions within the dealer development group about the results of your evaluation and what action, if any, should be taken?

A Yes, sir. What we did is we met as a group, Sam Johnston, Terry Billings, myself, Brian Higgons, and Jack Yarbro, which is basically our group, and we made a decision as to our plan of action for those dealers or some of those dealers, at least the ones that ranked on the bottom.

Q Okay. Was there one meeting or was more than one meetings?

A The way I recall, there was one, one meeting.

Q Okay. And as a result of that, what decision was made regarding Reeder-Simco?

A Regarding Reeder-Simco, we made the decision to terminate their dealership.

Q I want to go back, and I noticed that looking at some other dealers, one of them ranked actually a little bit lower on the number than Reeder-Simco. I want to talk to you about that. Did you decide to send out proposed termination letters to all of the dealers on this list?

A What we did, if the dealership had been prior probationary, which is reflected as 98 or 99, as you look down the probationary [859] column, if they had been

previously probationary and had also failed in meeting their objectives below the 80th percentile in calendar year 99, they were sent a termination letter. If they had not been probationary in previous years, then they were put on probation for the calendar year 2000.

Q Okay. So how did, how did that apply to Reeder-Simco?

A Since they had been previously on probation, we decided to terminate them.

Q Okay. So did you consider only their performance during the calendar year 1999 in making the decision on who would receive a termination letter?

A No, sir. We would have looked at 99, 98, and 97.

Q After December of 1999 or during December of 1999 you said a letter was sent to them, correct?

A Yes, sir.

Q And after that letter was sent, was Reeder-Simco actually terminated as a dealer by Volvo?

A The intent of our letter was to terminate them, but we never terminated them.

Q Can you tell us why?

A Reeder-Simco filed a protest in the State of Arkansas protesting the termination.

Q And what effect did that have?

A We could not terminate them until the proceedings were resolved.

* * *

[874] Q Yes. I asked you with respect to the dealerships who fell within the category of being terminated, what was Volvo's plan or was there a plan to replace those dealerships with other dealerships? And your answer was we didn't have a plan on who we would replace them with or how we would replace them, but we did understand that we were – let's see. This was 99. We did understand we were in a strong truck market, and we felt that we would not have trouble recruiting candidates. Was that your testimony?

A Yes, sir.

Q So what was the heavy truck, heavy truck market like in 1999?

A I believe 99 was pretty much a banner year.

Q All right. And what about for 2000?

A 2000 was another very good year. It started to fall off towards the end of the year, I believe. I'm going say the first three quarters of 2000 were very strong, similar to 99.

Q Now, in determining which dealers would be cut, was consideration given for performance of the dealers prior to 1997?

A I had no prior knowledge of that. In our meeting, we did discuss that, but I do not recall what the results of those discussions were.

Q Under the new proposed dealer agreement, is there a methodology which would allow Volvo to terminate the dealer prior to the expiration of the five-year term?

[875] A I'd have to look at the agreement. I was – I was involved with authoring that agreement, but I'd really

have to look. I believe we still have similar language about a probationary program.

Q Well, doesn't that also allow for early termination, not just probation?

A Are we talking about the new agreement, sir?

Q Yes.

A I believe you're accurate, but, once again, I'd like to see it to verify that.

Q Does the dealership or the dealerships have any control over setting the objectives under the new agreement?

A I think there's always interaction between the sales group and the marketing group and the dealerships on those numbers. In the dealer agreement, I believe we say that Volvo will set those objectives.

Q You indicated that there was about 166 or 167 dealers on the report. How many dealers are there now?

A I want to say 145 or so, maybe 150.

Q Has there been an increase in the dealerships that have more than one point?

A Yeah. I believe there has been some of that. We've gone through a pretty tough year. The last year, 15 months or so, some dealerships have gone out of business. Some of the more financially-strong dealers that have done well performance-wise [876] have taken that opportunity to add points. So I think there's been some of that, and, here again, I'm guessing on the 145 and 150. I just don't have that number right now.

Q In your letter you indicated, I believe, that for 2001, the – well, I'm sorry. Looking back here at Plaintiff's Exhibit 105, the parts purchase objective there of Reeder-Simco, you see that?

A Yes, sir.

Q 344,247?

A That's actually their actual results.

Q Actual results?

A Yes, sir.

Q The objective was the 473,100, right?

A Yes, sir.

Q Do you know where Reeder-Simco stood with respect to its actual parts purchases in prior years?

A I do not recall, sir, no. They would – that would have been taken into consideration in the previous years when they were put on probation.

Q Well, was that, that 344,247, was that one of the highest levels of parts purchases that Reeder-Simco had ever had in its history?

A I do not know, sir.

Q And do you know how the parts purchases objective was determined for Reeder-Simco?

[877] A My understanding is that our parts group looks at total vehicles in operation in a given market area or area of responsibility and there's some formulation involved in parts usage. I believe they also look at past sales performance and I don't have a formula on that, but I

do know they look at vehicles in operation and past sales performance.

Q Do you know what it means to be able to drop ship parts?

A Yes, sir. In our company, to be able to drop ship would mean that, for example, a dealer would have a customer in another location and the customer was of the type where the dealership didn't want to handle the parts. In other words, they didn't want to have the parts come and then physically take them to the customer. So in a drop ship situation, the dealer would order the parts and have the freight company go from the Volvo Distribution Center directly to the customer's door and deliver the parts directly to the customer.

Q And under that scenario, does that dealership, even though the parts aren't shipped to the dealership, does that dealership get credit on its part purchases objectives for having those parts drop shipped to the other location?

A As far as I know, yes, sir.

Q Okay. Do you know whether Volvo denied the drop shipping ability to Reeder-Simco with respect to the recent ABF transaction?

A The only possibility could be that we restrict drop ships in [878] other dealer's AOR's. For example, if Reeder-Simco's AOR includes the City of Ft. Smith, because I don't know my geography here, a dealer in Chicago cannot drop ship parts into Reeder-Simco's AOR. We would deny that because that would be – I don't know what you would really call it, but we just don't do that. So you can drop

ship either into your own area of responsibility or you can drop ship into an open area where there is no assigned dealer. So that would be the only reason that I would know of that they would be denied.

MR. BYARS: One moment, Your Honor.

THE COURT: Yes, sir.

MR. BYARS: Pass the witness.

THE COURT: Any redirect?

MR. WILLIAMS: No further questions, Your Honor. May Mr. Winner be excused?

MR. BYARS: Yes.

THE COURT: You may stand down. May this witness be excused, Mr. Byars?

MR. BYARS: Yes, Your Honor.

THE COURT: You may stand down. Have a safe trip home and be careful. Do you have your next witness here?

MR. WILLIAMS: Yes, Your Honor. Dr. Don House.

THE COURT: Okay. Just a minute, Dr. House. You-all want to take a quick break before we hear the next witness? We're finding that more and more of you are voting as we go along

* * *

[990] PLAINTIFF'S REBUTTAL EVIDENCE

BILL HECK, DIRECT EXAMINATION, PREVIOUSLY DULY SWORN

BY MR. BYARS:

Q Bill, you recall testimony from Tom Burke wherein he testified on the subject of additional concession being granted to dealers to help reduce inventory when an order is cancelled by [991] a customer?

A Yes, I recall what he said.

Q Has Reeder-Simco had a situation where a customer cancelled an order?

A Yes, we did.

Q And on what transaction was that?

A That was the last New-Hiway Express transaction.

MR. BYARS: Okay. Your Honor, I believe Plaintiff's Exhibit 128 has been admitted.

MS. PORTER: Which one?

MR. BYARS: Plaintiff's 128?

MR. SHANNON: It would be 128-A.

MR. BYARS: I'm sorry. 128-A.

THE COURT: It was also.

MS. PORTER: Yes.

Q Mr. Heck, what was this Exhibit, 128-A?

A That was a representation of an invoice on one of the last trucks of that original order.

Q Okay. And what happened with regard to some of the trucks in this order? First of all, how many trucks were included in this overall order?

A Originally it was 85 trucks, sir.

Q Okay. And what happened?

A In the process of New-Hiway Express transferring assets, or however they sold themselves to MS Carriers, MS Carriers was not [992] willing to pick up the balance of this contract, and so New-Hiway Express advised me of a certain time they would not be able to take any additional trucks. And I took steps to figure out how to try to stop them or what I was going to do with these extra trucks. It was originally eight. They could take 77, but they could not fulfill their contract for all 85.

Q So you had to request that eight be cancelled with the factory?

A Yes, sir.

Q And then what happened?

A Well, they had bid – we were able to cancel four of the eight by paying a cancellation penalty, which was a rule that had been created since this order was placed, but we paid a cancellation penalty on four of the eight, and we took, we took the other four of the eight into inventory approximately May or June, probably June, yeah, June.

Q So the customer cancelled and then you took those trucks into your inventory?

A Yes. I had no choice.

Q Okay. Let me show you what was marked as Plaintiff's Exhibit No. 28. What is that?

A That's a memo from this electronic memo system that it's a confirmation from a Russ Tedder of what we agreed to do about these extra trucks as far as concessions, but it's a memo from Russ Tedder, copy to me and Mike Truta.

[993] MR. BYARS: Okay. Your Honor, we move for the admission of Plaintiff's 28?

THE COURT: Any objection?

MR. SHANNON: No objection.

THE COURT: It will be admitted.

Q Twenty-eight says, Bill, as we discussed, you may be stuck with eight Hiway tractors that they cannot accept, and he lists the serial numbers. If this is the case, we will back the concession level back to 20 percent; if you can move all eight at one shot, we will go 21 percent. Just let Mike or me know when this takes place so we can adjust accordingly, is that right?

A Yes. That's – that's –

Q What was your initial total concession on this 85-truck order?

A 25-point, 25-point something.

Q Okay. And this memo indicates that they – that Volvo is going to charge back the concession?

A Not exactly. What he was indicating there was to plan on having 20 or 21 percent, but when I actually sold them, that's when they would go in and do the adjusting; in other words, they would charge me back the 20 or 21 percent when the sale occurred.

Q Okay. So what happened in the interim, I mean with these cancelled orders?

A Well, we had them in inventory and at the same time, among all of these letters we had been receiving this period of time, [994] we got a letter that we weren't living up to our end of the bargain in stocking and selling VN's –

MR. SHANNON: Your Honor, may we approach on this issue?

THE COURT: Yes, sir.

(The following proceedings were had at the Bench between Court and counsel and out of the hearing of the jury:)

MR. SHANNON: Your Honor, I don't see how this testimony is – using this Exhibit I believe rebuts any testimony that the Defendant's put on.

MR. BYARS: Your Honor, this has to do with Tom Burke's testimony whereby other dealers after the fact got increased concession for cancelled orders, and what we're showing here is that Reeder-Simco actually got a decrease in the concession on similar cancelled orders.

MR. SHANNON: I don't see how this Exhibit or this line of questions applies to that at all.

THE COURT: Well, I'm going to permit it. I'm going to overrule your objection. I'm going to permit it. You may continue.

(The following proceedings were had within the presence and hearing of the jury:)

Q Let me back up, Mr. Heck. When these orders were cancelled and you took certain trucks back in inventory, what kind of trucks were these?

[995] A These are VNL64 T 610's to the specifications of Hiway Express. You know, you might call them fleet trucks.

Q And the VNL, was that a new product or the VN 770, was that relatively a new product for Volvo?

A Well, the VNL 64 T 610, when this Order was placed, was a brand new product. We ordered these trucks on a handshake with a a customer. We were the first ones to get an order for the VN in.

Q And so after you took these trucks in inventory, what happened next concerning these?

A Well, financially we got a charge back on our parts account for the sum total for the four trucks of approximately $35,000.

Q What does that mean? How did that happen?

A They decided to charge us back the concession. I don't know why.

Q Well, explain to the jury what it means to charge back your parts account. They may not understand that.

A Oh, oh. Well, we had the units on a floor plan at a certain amount of money that reflected the price we paid for the trucks. So that price included the concession amount of 25 some odd percent, you know, whatever that is in dollars, I don't have it in the top of my head, but when they decided to adjust the concession to a lower amount which was approximately 15 percent, that was over $8,000 per truck. And instead of adding that to our floor plan balance, they just added that to our parts [996] account. Every month we clear an account with them. We buy parts and do warranty. It's a clearance account. We ordinarily have to pay money on that account.

Q All right. And so I guess it was a charge to your parts account of how much money?

A Approximately $35,000 for all four. It was 8,000 some odd dollars each.

Q And then at some point in the future, were there any sales of these trucks that you had to take back into inventory?

A Yes. Vaughn Drum arranged a sale to Mr. Youngblood's company, Southwest Financial Services, Southwest Distribution in Alma, Arkansas.

Q All right. And what concession were you permitted with regard to those trucks, the sale of those trucks?

A Approximately 20 percent, so we received a credit of 4,000 per truck which would be about $16,000, and this probably took place in November, as my memory serves, and we also gave back the premium warranty that was on these tractors. There was $3,000 premium warranty included in the base price of these particular trucks, and

we gave that back to be able to obtain the price level that Mr. Youngblood was able to fit into his business plan.

Q Okay. So what was the net effect with regard to these four trucks that you had to cancel because your customer, New-Hiway, could not accept the eight?

A Well, we went from 25 percent to 15 percent to 20 percent. [997] So our experience with cancelled orders was that they charged us back, not that they gave us more money.

Q And there were some comparisons that were put on the board and commented on by Mr. Burke whereby these other dealers received a higher concession when there was a cancelled order, is that correct?

A Yes. They were not charged back the initial amount in any form and they were given more money.

Q Now, that process of what these other dealers were able to obtain with the concession, is that consistent or in compliance with Volvo's sales policy dated October 31, 98, which is also Plaintiff's 69?

MR. SHANNON: Your Honor, I would object to that question.

THE COURT: It's overruled.

A No.

Q Okay. What does the policy state should happen in those circumstances?

A The last paragraph, any change in the status of the ultimate purchaser of specific vehicles as listed in the RSA gives cause for VTNA to adjust, modify or otherwise

deny payment and/or to charge back to the dealer a portion or all of the amount granted.

Q And is that what happened with those other dealers, the charge back?

A No. They weren't charged back. They got more.

In the United States District Court
Western District of Arkansas
Fort Smith Division

Docket No. 00-CV-2031 (RTD)

[Caption Omitted In Printing]

DEPOSITION OF
HUGH SAMUEL JOHNSTON

At Greensboro, North Carolina
Tuesday, May 22, 2001
4:12 p.m.

Reported by: Ramona J. Crouse

[Read into the record at trial on January 15, 2002]

* * *

[28] Q. Okay. And who quit?

A. Barbara Rosetti.

Q. Okay. What was – what were her job duties when she quit?

A. She was in charge of an area of the country in terms of handling the dealers and monitoring their progress and taking care of the – taking care of the buy-sells.

And then the other thing she did was the dealer sales and service agreement, and she also monitored the probationary dealer list.

Q. Okay. So what did you ask Mr. Winner to do in terms of evaluating or looking at dealer performance?

A. Just that: to compile a list of the dealers' performance.

Q. And did he do that?

A. Yes, he did.

Q. What did Mr. Winner provide to you?

A. A list of the dealers. I don't know if you have the list, but I think the list had on it sales objectives and percent of objective towards – or percent of completion towards that objective, as well as parts and engine sales on it too – I believe was on the list.

[29] Q. And did Mr. Winner advise you or did you know what data he reviewed in coming up with that list?

A. Yes.

Q. Okay. Which one was it? Did he tell you or did you – do you know or even instruct him on how you wanted that done?

A. I don't remember which way we did it. I really don't at this point.

Q. Okay. Do you remember today what data he actually looked at in evaluating or compiling the list of dealer performance?

A. No, I really don't remember.

Q. Okay. Did you have any meetings with David Winner concerning his findings, the results of his analysis?

A. Yes, we did. Yeah.

Q. What was the purpose of that?

A. Actually, I believe the meeting was with everybody in the department, and the purpose was to create an objective standard on how to review what nonperformance and performance was.

Q. At about this time is it true that the dealer sale and service agreements which were in existence were either coming up for renewal or expiration?

A. By "coming up," if you mean within a 12-month [30] period, yes.

Q. Okay. And what date was that?

A. They were – the renewal was in – well, the dates actually varied depending on the state statute.

Q. But, generally speaking, you were looking at the nationwide network of dealers who basically had the same dealer sales and service agreement. Is that true?

A. It depends on what you mean by "looking at."

Q. Well, in late '99 is it true that every dealer in the United States had a substantially similar dealer sales and service agreement?

A. Yes.

Q. And at that time was it also true that those agreements were set to expire in March of 2000?

A. Yes.

Q. Okay. And was it – was one purpose of having Mr. Winner perform his analysis to determine which dealers would be offered a new agreement and which ones would be canceled or terminated?

A. Yes.

Q. Okay. And was that a purpose that was discussed with Mr. Winner before he undertook this task?

A. I don't know if it was or not.

Q. Okay. If he – well, you were Mr. Winner's [31] supervisor. Right?

A. Yes.

Q. Did Mr. Winner report to anybody else?

A. No.

Q. Okay. Would he have received any instruction directly from Mr. Patterson, for example?

A. He could have. I don't know.

Q. Okay. Did you have – correct me if I'm wrong, but I think you stated that you just don't recall now what information – what data he looked to to compile the list. Is that right?

A. Yeah. Anything I would tell you would just be an educated guess, because I don't recall now.

Q. Okay. And did Mr. Winner report his results to you in writing?

A. Yes, he did.

Q. And what was that writing? What did it look like?

A. It looked like a chart. It was a list of dealers and had their objectives on it and whether they – and where they were on making that objective.

Q. Okay. I think Mr. Winner referred to that as a spreadsheet.

A. Okay.

Q. Did you have a particular name for that document, or did you just –

[32] A. I don't think we had a name for it. We may have. I'm sure we did.

Q. Over what course of time did Mr. Winner compile that list?

A. I'm not sure of that.

Q. When Mr. Winner had completed the preparation of that list and brought it to your attention, how soon after that did you meet with Mr. Winner to discuss the outcome of his recommendations or what the dealer development group would be doing with the dealerships?

A. It was a reasonably short time after that, and it was with the whole group of the dealer development people that we met.

Q. Okay. Who – and tell me who was in that group.

A. It would be Terry Billings, Brian Higgins, David Winner, of course, and Jack Yarborough. I'm sorry. Y-a-r-b-r-o-u-g-h. I think he actually pronounces it "Yarbrough."

Q. All right. And was this spreadsheet that Mr. Winner prepared distributed among everybody in the group?

A. Yes, it was.

Q. Okay. And was it in one meeting or was it in a series of meetings that decisions were made as to [33] what would be done with each dealer?

A. I believe it was in a series of meetings.

Q. Okay. Over what course of time?

A. Several weeks.

Q. And was Mr. Winner's analysis given substantial weight in the decisions to cancel and terminate dealerships?

A. Yes, it was.

Q. In fact, was each – the way I understand it, the spreadsheet had a group of dealerships which were recommended for cancellation or nonrenewal, another group of dealerships that would be on the list for probation, and another group that – when they were unsatisfactory – had a satisfactory performance level. Is that correct? Is that true?

A. Yes. Yeah, I think that is correct.

Q. Okay. Was each dealer which Mr. Winner had set up – or placed in a group to be canceled or terminated actually canceled or terminated?

A. I'd have to look at the list. I don't recall.

Q. All right. Was Reeder-Simco among the dealerships in the group Mr. Winner had for cancellation or termination?

A. Yes, they were.

Q. Do you recall any specific discussion as to the [34] decision to cancel or terminate Reeder-Simco as a dealership?

A. I don't recall any specific conversation about that.

Q. Okay. Do you recall whether, with regard to any of the dealers on the group – included in the group to be terminated – whether any further investigation or analysis was made beyond Mr. Winner's analysis as to whether or not they would be retained as a dealer?

A. Well, I know we had discussions about that, and I don't recall whether we did additional analysis or not. But there were discussions on each dealer.

Q. Is it fair to say that the decision-making process pertaining to how – I guess looking at the numbers for the dealerships and how those numbers compared to the objectives which had previously been given to the dealer?

A. Yes.

Q. Okay. And was any discussion or analysis done with respect to how those objectives had actually been previously set for the particular dealer or dealerships?

A. Yes, there was discussion on that point.

Q. Okay. And tell me the – what you recall about [35] that.

A. Again this is recollection, but I think we went through to make sure that the objectives were reasonable in comparison to the other dealers' objectives.

And we also looked at the performance over a several-year period, not just the – you know, not just one year. So

we went back and looked at what their performance had been prior and how long they had been on probation. We also looked at that.

Q. All right. Do you know how long – what – for what period of time the dealer's performance was reviewed?

A. As I recall, we reviewed those performances of dealers that had been on probation for whatever length they had been on probation.

And I think in Reeder-Simco's case they had been on probation for a couple of years, so we reviewed – we probably reviewed it – and, again, I'm just trying to recollect, but I think we probably reviewed those years that they were on probation as well as the other dealers that had been on probation for a significant amount of time.

Q. All right. Was any consideration – well, let me ask you this: Was a decision made to terminate or [36] cancel Reeder-Simco as a dealership?

A. Yes.

Q. Okay. Let me have you look at Plaintiff's Exhibit Number 54.

A. Okay.

Q. What is that document?

(Deponent peruses document.)

A. This document was sent to Reeder-Simco to inform them that we were concerned that they may not meet their objectives and to give them some time period in

which to hopefully meet those objectives prior to us issuing a termination letter.

Q. Okay. And is it your understanding that Reeder-Simco was in fact terminated as a dealer by Volvo?

A. I – you know, I don't think I can answer that. And I'm not trying to be evasive. But it's mine that a letter was sent but we did not terminate them. That's my understanding, but I'm not a lawyer, so I don't –

Q. What was your intention – what was your intention in having this letter submitted to Reeder-Simco?

MR. WILLIAMS: Object to the form.

A. Our intention was that he would sell a lot of trucks and sell some parts and thereby meet his [37] probationary terms, and then we could take him off probation.

Q. Do you know whether that happened?

A. No, it did not.

Q. So in your mind at this time frame, was Reeder-Simco – was a decision made to terminate or cancel Reeder-Simco as a dealer?

MR. WILLIAMS: Object to the form.

A. The decision was made to send him a letter of termination.

Q. Okay. And who made that decision?

A. That decision was made by me, and I believe it was signed off on by Chris Patterson.

Q. Did you actually conduct your own analysis, or did you rely upon Mr. Winner's analysis in your decision to have a termination letter issued to Reeder-Simco?

A. I relied on Mr. Winner's analysis.

Q. Okay. All right. Do you recall whether there was any discussion among the group as to whether Reeder-Simco had significant fleet sales prior to 1997?

A. I don't recall if there was that discussion or not.

Q. Okay. Do you have any involvement with the development of national accounts?

* * *

[46] transaction price, so whatever, multiplied, that would be.

Q. Okay.

A. But currently it's not at three percent. It got up to 2.8 percent, and because of the used-truck difficulty the market is in, I believe it's dropped precipitously from that number.

Q. Could you comment generally on what the general market was for Class 8 new – new Class 8 trucks in 1995?

A. I have not a clue.

Q. What about 1996?

A. I wouldn't know that either.

Q. What about '97?

A. I wouldn't know that either. I was selling GMC medium-duties.

Q. What about '98?

A. '98 was a good market, as I recall. I think it was in the upper 100s.

Q. And then '99?

A. '99 was our record year, I believe, so I think we got up to – not counting – if you do North America, I think it got over 300,000, which includes Canada.

Q. And in 2000?

* * *

[52] Q. Okay. Had you – have you heard – been a party to or have you heard any discussion concerning that the Volvo challenge – or that one of the challenges to Volvo is that Volvo has too many dealers? Has that statement been made to you at any time since you've been employed with Volvo?

A. I don't think so.

Q. Would that reflect the policy of Volvo, that it had too many dealers as of that time frame?

A. The policy of Volvo was that we wanted to reduce the number of dealer operations and increase the number of dealer points for the purpose of driving out – costs out of the dealer network. That was what our stated intent was.

Q. Okay. Repeat that. I'm not sure I'm following you. Reduce the number of dealers –

A. Uh-huh.

Q. – but increase the number of dealer points?

A. Correct.

Q. What do you mean by that?

A. You would have fewer dealers that would own more points.

Q. Fewer number of owners which would have a greater number of facilities?

A. Yes.

[53] Q. And what would the purpose of that be?

A. To reduce costs in the distribution system.

Q. How would it do that? What's the theory behind that?

A. The theory behind that is, for example, you would only need one accounting system and it could handle multiple locations. You would increase your ability to perhaps buy supplies, etcetera, because you'd have scale. It's really based on scale.

Q. So when you're – when you're talking about the reduction – okay.

Has Volvo – do you know whether there's been a policy or direction towards Volvo attempting to acquire, as part of that theory, more company-owned dealerships or company-owned stores, so to speak?

A. That was not our intent. It's not based on that philosophy, no.

Q. What was it? Just to assist currently certain dealers to acquire other dealerships?

A. Yes. It was to assist high-performing dealers to require – to acquire lower-performing dealers.

Q. Okay. And has that ever been, you know, announced or discussed with some of the lower-performing dealerships: "Look, guys, you're not performing very well. What we'd like to do is come in and [54] offer you a fair price for your dealership"? Is that done, or is it just a methodology by Volvo just to run them off, terminate them?

MR. WILLIAMS: Object to the form.

A. Yes/no.

Q. Okay. Is it fair that one method Volvo is attempting to utilize or has attempted to utilize is simply to cancel or terminate dealerships such that there is no obligation to come in and pay the reasonable value for that dealership?

A. No.

Q. But you are saying that there have been occasions where Volvo has approached nonperforming dealerships or dealerships who have been performing poorly and said, "You're not performing well. We would like to offer you a fair price for your dealership"?

A. Yes. That's true.

Q. And when has that occurred?

A. On multiple occasions.

Q. Has that occurred with Reeder-Simco?

A. We can't talk about that.

MR. WILLIAMS: I'll object to the form. Let's take a break. Go off the record.

(Off-the-record discussion.)

[55] Q. Prior to Reeder-Simco initiating any litigation against Volvo, was there any attempt by Volvo to approach Reeder-Simco as a dealership and pay a fair price for the dealership such that, I guess, a higher-performing dealership could take over that location?

A. No.

MR. WILLIAMS: Just a minute. I object to the form.

You can answer, but I object to the form.

A. No.

Q. All right. But was that done with other dealerships?

MR. WILLIAMS: Object to the form.

A. Was what done with other –

Q. Was there – well, prior to the initiation of the litigation by Reeder-Simco in this case, were there attempts by Volvo to approach nonperforming dealerships and make offers to those dealerships to facilitate a purchase, pay a fair price for the dealership such that another dealership could take over?

MR. WILLIAMS: Object to the form.

A. Yes.

Q. Okay. And where did that occur, in what [56] circumstances, and what dealerships were involved in that?

A. I'd have to – I'd really have to go back and think about which dealerships. And in most cases the circumstances were based on confidentiality, so I don't know that I'd be able to tell you that.

And I think I'd better check with our counsel to see how much I can tell you, because I don't – again, with confidentiality, I'm not sure. But almost every case we signed a confidentiality agreement, so I probably need to check that.

Q. Well, given that there was – and correct me if I'm wrong or I mischaracterize what you've said, but – correct me if I'm wrong, but given that there was an intention on the part of Volvo to acquire or pay a fair price for nonperforming dealerships, what did Volvo utilize as a multiplier in determining the fair value of the dealership to be paid?

MR. WILLIAMS: Object to the form. And I guess we need to raise – I don't know. We may need to confer with him to what degree – he's already said he thought there were some confidentiality agreements involved with the other dealerships. Why don't we take a break and let us talk about it?

* * *

In the United States District Court
Western District of Arkansas
Fort Smith Division

Docket No. 00-CV-2031 (RTD)

[Caption Omitted In Printing]

DEPOSITION OF
CHRISTOPHER WILLIAM PATTERSON

At Greensboro, North Carolina
Wednesday, May 23, 2001
8:47 a.m.

Reported by: Ramona J. Crouse

[Read into the record at trial on January 17, 2002]

* * *

[0059] Are you familiar with that?

A. (Shakes head from side to side.)

Q. Has Volvo ever utilized or submitted a marketing and financial plan – or what was entitled a "Portfolio of Criteria" to a dealer after 1995?

A. I don't know.

Q. Look at page 5 of Exhibit 2. There's what's entitled a – I'm sorry. I'm on Exhibit 3.

A. Page 5 of Exhibit 3?

Q. Yes, sir.

A. Okay.

Q. It's entitled "1994 Forecast of Operations." Do you see that?

A. Yes.

Q. There's a column entitled "Gross Profit," and it says, "WhiteGMC" and Class 8 Volvo New Trucks, $2,000 per unit.

A. Yes.

Q. Is that gross profit figure a reasonable gross profit figure a dealer can expect in selling Volvo trucks?

MR. WILLIAMS: Object to the form.

A. I would respond to it in this fashion: that that particular gross profit figure is very low.

Q. It's a low profit figure?

[0060] A. Yes. That's a very conservative –

Q. What would your expectation be with respect to the gross profit a dealership receive per truck in the sale of Class 8 heavy trucks?

A. Let me respond to that by saying that the dealership's gross profits have eroded in the past 18 months because of market conditions, but four and a half percent is the average gross profit recorded by all Volvo dealers.

And while I don't have a precise average retail selling price for the vehicles, I would hypothesize – and I think I'm pretty close – it'd be somewhere in excess of $80,000. So that would suggest a gross profit figure of about $3,500, or perhaps higher than that, would be more typical.

Q. Okay.

A. So without – that's pure objective data. That's not value judgment.

Q. All right. And you know that to be a fact?

A. Yes.

Q. All right.

A. Other than the precise retail selling price at the retail level, but it's going to be in the range of that 80,000 to 85,000 dollars.

Q. All right. If you would look, please, at the

* * *

[0098] Q. Well, to place all of the dealers on an even playing field with respect to sales of trucks and obtaining truck pricing, why not give the matrix documents to the dealers so that the dealers know at what discount they can obtain trucks?

A. Because there are a number of other factors that influence – and not all are listed here, but there are other factors that influence our determination over and above what is – and the dealers do have a baseline price.

We have an MVP program for stock orders and for one-offs that provides a bundle of services and warranties and so forth to the dealers. But when a request is made outside of that program, there are a number of other elements that have to be considered, some of which are not listed there because they're not necessarily in the – even in the frame of the region salespeople. They're things that change.

Q. Okay. Well, I'm talking about the requests which would fall within the district manager's or the regional vice president's authority.

A. Uh-huh.

Q. Why not provide the matrix documents to the dealers such that the dealers will know the amount of [0099] concession request they can make, given a particular transaction?

A. You're concentrating on one small element of the transaction, Counselor. The dealers have a fixed price that's uniform across all dealerships that they can purchase trucks at.

When they contact us to seek further assistance, there are a number of other elements that we – and we may well choose not to provide the further assistance.

This permits us some flexibility to deal with specific situations as they arise, but this is not a blanket pricing-relief situation. You fundamentally misunderstand the nature of how this business is transacted.

Q. Dealer makes a – dealer A makes a concession request of – let's say for a VNL 770, and he's got ten trucks. And he makes concession request to his district sales manager of ten percent.

That district sales manager will go back to the dealer and say, "I'll give you seven." And I'm referencing Plaintiff's Exhibit 93 for this example. Okay.

The maximum authority that that district sales manager may have on that transaction is –

[0100] A. 6.4 plus –

Q. – 8.6 percent. Is that right?

A. Uh-huh.

Q. So the district sales manager has authority to do that, doesn't he?

A. Yes.

Q. Okay. And let's say dealer B goes to the district sales manager and says, "I want a 15 percent concession," same model, same number of trucks, and the district sales manager says, "I'll give you 8.6 percent."

The district sales manager has authority to do that, doesn't he?

A. The district sales manager is required to confirm back through the – today this process is thoroughly automated. That's why the calls are placed and why we solicit information about who the customer is, how many trucks are involved, specifications –

Q. I'm not talking about the same customer.

A. Oh, okay. Within a given – yes, that's correct.

Q. Okay. Doesn't that process allow for the dealers to get differing prices – different prices? One dealer gets an advantage over the other dealer in price for a substantially similar sale?

[0101] A. Not –

MR. WILLIAMS: Just a minute.

I object to the form.

A. Yeah. Not for the same customer, no.

Q. I didn't – I didn't say the same customer. We have dealer A and dealer B. Dealer A makes a concession request of ten percent for the sale of ten trucks to customer X.

A. Uh-huh.

Q. And the district sales manager says, "I'll give you seven percent."

A. Right.

Q. Dealer B goes to the same district sales manager and says, "I want 15 percent concession on customer Y – for a sale to customer Y," same model, same volume of trucks.

A. Uh-huh.

Q. The district manager, in that scenario, has the authority to tell dealer B that "I'll give you 8.6 percent." Is that correct?

A. That's correct.

Q. So how does that not result in a disparity in price between dealers in a substantially similar transaction?

A. Well, it does.

[0102] Q. It does?

A. Uh-huh.

Q. Okay. And that happens, doesn't it?

A. Yes.

Q. And it's happened to Reeder-Simco, hasn't it?

A. I don't know that for a fact, but certainly the way that we do business, that is a prospect.

Q. Now, does it make sense to you that if dealer A and dealer B both know that the concession level is 8.6 percent, they're going to be on the same page, the same playing field, for each transaction?

A. If all trucks were identical, if they were like this coffee mug here and they were all black coffee mugs, then that would make sense. But they are not.

And, matter of fact, we frequently find ourselves in situations where customers, because these customers are very mobile, will go to two or three different dealerships, they will ask for concessions on trucks, and we will find that there's a difference in the calculated list price, which is a function of what the dealer interprets the customer's requirements to be. That can be off by two or three percent all by itself

So in fact what we're talking – you're [0103] assuming like, kind, and quantity to apply to a VNL 770. The trucks are not identical, nor is our profit margin on variations in the specifications identical either.

So in theory and in the abstract form, you are correct. Some price discrimination may – could conceivably exist. But even where two dealers are quoting exactly the same fellow on what that customer believes to be identical trucks, they aren't. The requests will come in and there'll be significant differences in what the content of that vehicle is.

Q. Why then are there not further breakdowns to the district sales managers to equalize price to the dealers

other than just the model number and the volume of trucks?

A. Because when we get into more complex situations, we need – the body of knowledge that the group that works for Selwyn Feaster has is much too extensive to have – to continually and chronically update for an entire field organization.

We have made considerable progress with the online – what's known as the RSA system, but it is not practical to do as you described. If would be if I were selling coffee cups.

* * *

[0108] chosen simply to stay in Greensboro and stay as the president of Volvo Trucks North America, the span of responsibilities would have been narrowed because some activities between Mack and Volvo and Renault were being consolidated.

So he made a career choice to – he didn't wish to relocate, and he did not wish to continue in a role that his heart wasn't in. So he chose to pursue other career opportunity.

Q. Are you aware of a statement made by Mr. Gustafson at a dealer conference in Marco Island, Florida, to the effect that 50 percent of the Volvo truck dealers would not be in business in the next few years?

A. I recall that speech, yes.

Q. Okay. He in fact made that statement?

A. Uh-huh.

Q. Do you recall what else was said in making that statement?

A. It was a general statement of the changes that we – at that time we foresaw in the industry, many of which have come to pass, and a logical continuation of trends that had been evident for some time in our business and the automotive business in general.

[0109] Q. Which was what?

A. That there has been consolidation in suppliers, there's been consolidation of manufacturers, as evidenced most – close to home by the fact that Renault gave up building trucks, and that there's been consolidation in dealerships as well.

Q. And how did the consolidation of dealerships occur?

A. Variously, dealers go out of business in difficult times like this, or many dealers are in financial stress and some are either forced out of business or choose to give up the business voluntarily.

In other instances some dealers choose to – or some dealers establish that they wish to grow and they will seek to purchase adjacent dealerships or, in some cases, dealerships in totally distant parts of the country to broaden their base of operations.

But it's a reflection of larger trends in the economy as a whole.

Q. Has Volvo sought to facilitate the process of consolidation of Volvo dealers?

A. Can you be more specific?

Q. Well, is there any policy or – I don't know if that's a fair term, but desire or action planned by Volvo to have other Volvo – have Volvo dealers [0110] purchase or buy out lesser-performing dealerships?

A. There have been – due to current economic conditions, the pace has slowed somewhat. But, yes, we have sought to facilitate the – what is the term? – the consolidation, the agglomeration of dealers into larger business units.

And when I say facilitate, that's making certain investments to encourage that to take place. Our overriding objective – and that, I believe, was the gist of Mr. Gustafson's speech – is if the profitability of the dealer network is not satisfactory – and to broaden that somewhat, it's not satisfactory for the manufacturers, for the suppliers – in today's context, even the customers aren't terribly profitable.

And in order for the company to be successful, the dealer network as a whole has to produce substantial returns for investors. And with the conditions that we face in the marketplace and the evolution of both the customers, which are consolidating at a rapid pace, and also the increasing transparency in pricing that's been facilitated by things such as the Internet and inexpensive communication and so forth, many dealerships that were in smaller-market-potential [0111] areas were having a difficult time generating a satisfactory return for their investors or, conversely – or in many cases were losing money, which is not a sustainable situation for anyone, whether it's a huge company like Volvo or a small dealership in Yakima, Washington, or somewhere.

So, yes, we have sought to influence – to try and stay ahead of the economic trends and have enjoyed some success in some areas in doing so.

Q. Well, does that also include Volvo purchasing dealerships to become company stores?

A. No. Volvo has a policy. It does not seek to engage itself in the retail business for a variety of reasons.

So in instances where we have – and there have been instances recently, against a backdrop of a market compression of over 50 percent in the past 24 months, we have seen dealers get into difficult circumstances. And where no private capital alternative exists and the market area is a substantial service location, we have been compelled to step in and acquire some dealerships.

But it is our desire and our objective – and one of our business goals is to divest of those as quickly as practical to private-capital operators.

* * *

[0114] Q. And what was the reason for that?

A. That one is somewhat mysterious. She left somewhat quickly, and there really was no – I can't – I don't know why.

Q. Okay. That's fair enough. When did she leave?

A. I would estimate two years ago.

Q. Okay. Who took her place?

A. I believe Brian Higgins was the immediate – or at least the direct successor to her. I have to think of this in terms of head count. We have open positions. And I believe

Brian Higgins was the individual who was hired to replace that vacancy.

Q. Let me have you take a look at Exhibit 101. Can you identify that?

A. Yeah.

Q. What is that?

A. This is a synopsis of a general understanding of vision of what we anticipated it was going to take in order to produce a more profitable business for both the dealers and for Volvo.

Q. Do you know who issued that?

A. Well, it originally – no. That's destination. No, I don't know from whence that came. I've never seen it laid out in this form. It says, "Due to the 2000 glitch," and it has Barbara Rosetti's name [0115] in the receipt line.

Q. Now, is that an accurate statement of the Volvo vision as of that date?

A. Yeah. That's what we saw we had to accomplish in order to secure higher levels of profitability for the dealership and for the manufacturer, given what our analysis of the situation was.

Q. And one of the elements was to reduce the number of dealerships?

A. Yeah. That's an outcome, not an objective. We saw that the businesses needed to be larger in order to amortize the overheads. The costs that the dealers incur to represent product lines are rising.

The margins available on trucks and parts have compressed for both manufacturers and dealers, and as a consequence a certain scale is necessary to achieve the kind of profitability levels that we're citing in there as our objective for the dealerships.

Q. And has Volvo actually made progress in achieving that goal or made progress in areas which have resulted in fewer dealers?

A. The number of dealerships has reduced, although I wouldn't – I would say that the number of dealerships – that has more been a result of [0116] economic duress brought on by market conditions than it has by – proportionately, more of that has happened in spite of our influence than has as a result of the actions we've taken.

Q. What was the truck market like generally in 1999?

A. It was inflated beyond reason, and we're now paying the piper. I liken it to that last drink one has at a party that the hangover – the longer you prolong that last drink, the deeper the hangover is. And were now in a heavy hangover.

Q. Okay. When did the decline begin?

A. The order intake, which is the first indication, began to drop precipitously in the latter part of – pardon me – in the middle part of 1988. The production rates remained far, far in excess of what the order support would suggest was reasonable through – till essentially the third quarter of last year.

And the outcomes of that were a dramatic reduction in the industry's backlog and a huge run-up in retail inventories.

Q. Did you say 1988 in your answer?

A. '98. I'm sorry –

Q. 1998?

A. – if I didn't enunciate clearly.

* * *

In the United States District Court
Western District of Arkansas
Fort Smith Division

Docket No. 00-CV-2031 (RTD)

[Caption Omitted In Printing]

DEPOSITION OF
ROBERT DAVID WRIGHT

At Greensboro, North Carolina
Thursday, May 24, 2001
8:50 a.m.

Reported by: Ramona J. Crouse

[Read into the record at trial on January 17, 2002]

* * *

[0069] Q. Okay. How is dealer stock priced? How is the dealer price of its own inventory determined?

A. There's a net discount that's received – if it's a stock truck, there's a net discount that's received. And then they can apply for more concession, again, based on the competitive environment of the deal.

Q. Well, if a truck is sold to a dealer for its own stock or own inventory, is there usually a customer waiting in the wings for that stock truck? Is that your understanding?

A. If it's for stock, no. They're speculating that there would be a customer out there.

Q. Okay. And does Volvo require dealers to maintain a certain level of stock for inventory?

A. Sure. A representative sample of the product line.

Q. Okay. And does that vary, depending on the dealership, as to the number of trucks required?

A. It depends on the size of the market.

* * *

[0073] Q. All right. Does a dealer generally pay more for his own inventory than the price he quotes to customers for – let's say if a dealer's required to have five trucks on hand.

A. Uh-huh.

Q. Does a dealer pay more for those stock trucks than what the dealer may be able to obtain for a five-truck deal to a customer?

A. Yes, because we discount the trucks to the retail market to the customer.

Q. So –

A. The difference is in a wholesale mentality versus a retail mentality. And we are – our total focus right now is on retail velocity, moving the trucks [0074] through.

So if a dealer says, "I've got" – you know, "I've got a deal with this customer," then that's when we apply the discount. We try to give them some help up front to reduce their floor-plan charges, but the ultimate discount is based on what the dealer – what the customer requires to make the deal.

Q. And do you know whether it is the practice of Volvo that when a dealer sells a truck out of inventory – is that dealer required to replenish that stock truck?

A. Not always.

Q. Okay. Under what circumstances would the dealer not be required to restock a truck which is sold out of inventory?

A. If he's overstocked, if the market is not conducive to having the same level of inventory that they had before. I mean, that's something that we watch every single day, is the dealer inventory levels.

To be honest with you, we – we only want them to keep a minimal amount. Retail velocity is the key, and that was – that's been the fallacy in this industry for years, is people operated on a wholesale mentality. And that's why you get [0075] inventory clogged up and dealers go out of business all over the industry.

The trick is to move the stuff through, and that's what we're focused on, not stocking – not stocking a big number of trucks but finding customers and retailing them.

Q. Well, given that philosophy, does it seem reasonable to you that if a dealer has stock on hand, that that dealer ought to be able to receive additional concession level in an effort to sell stock trucks?

A. Depends on the customer and the competitive environment.

Q. Okay. Well, to your knowledge, is there any prohibition against a dealer obtaining additional concession level with regards to trucks held in the dealer's inventory?

A. Quite the opposite. We've spent tens of millions of dollars moving dealer inventory over the past 18 months, and we want them to move it. Soon as they move it, we can build a new one.

Q. Okay. So you're saying that, yes, additional RSA is available to a dealer with regard to his stock trucks?

A. Correct.

[0076] Q. All right. And is that – are the concession levels consistent with the sale of just – I mean, is it treated in the same manner as trucks which are not in the dealer inventory? In other words, you go through the same concession process?

A. Yes. Right.

Q. Is there any difference that you know of?

A. Same – same decisions are made.

Q. All right. There's another paragraph here in this . . .

* * *

[0078] Q. You don't have any expectation of what the dealer ought to be able to earn in the sale of a truck to a customer?

A. Depends on the customer. Depends on the trade. Some dealers lose money on trucks. Some dealers make $10,000 on one truck. It's all over the board.

I mean, right now you've got dealers – Freightliner dealers that are losing $10,000 per truck. There were times when we were selling 770s when dealers were making ten or 12 thousand dollars gross profit per truck. So it's all over the board.

MR. WILLIAMS: Could we take a break? Maybe we can check on that call too, follow up.

MR. BYARS: Sure. Fine.

(Short break from 11:14 am. to 11:28 am.)

Q. Okay. In one of your answers – I believe I asked you about how the dealer stock is handled with the dealer obtaining additional retail sales assistance with units of stock.

A. Uh-huh.

Q. And I believe you stated that the decisions are made the same way –

A. Uh-huh.

[0079] Q. – as a sale to a customer. Right?

A. Uh-huh.

Q. But is the process the same?

A. As to how he gets that discount for stock?

Q. Yes.

A. No. Its different.

Q. Okay. How does that –

A. There's established guidelines. It's just discounted up front for a stock truck.

Q. Okay. So there's a discount up front for a stock truck?

A. Right.

Q. But is there – is there any other discount available after that?

A. Yes.

Q. Okay. And what is the process with regard to obtaining additional retail sales assistance?

A. Same as any other truck, whether it's ordered or the other. They – I think were still faxing that information in. They fill out a form. They fax it – they fill out a form, tell us what they need, fax it in, and we respond back.

Q. Why is that done differently from the electronic?

A. We just haven't put that on the electronic system yet. It's a couple of months out.

[0080] Q. Okay. How many dealers are currently within the Volvo dealer network?

A. Hundred and sixty-something, I think.

Q. Do you know how many dealers were in the dealer network one year ago or one and a half years ago?

A. Probably about the same.

Q. Okay. Have some dealers which have gone out of business – have they been replaced by other dealers?

A. Yes.

Q. How has that occurred?

A. Can you clarify that?

Q. Has Volvo provided assistance in the acquisition of dealerships or consolidation of dealerships?

A. Financial assistance through – yeah, we've provided some financial assistance.

Q. Okay. To how many different dealers?

A. I don't know.

Q. Okay. Has Volvo also increased its number of what I guess you'd call company store –

A. Yes.

Q. – company-owned franchise?

A. Yes.

Q. And how many does Volvo currently have?

A. I think we have seven or eight.

* * *

In the United States District Court
Western District of Arkansas
Fort Smith Division

Docket No. 00-CV-2031 (RTD)

[Caption Omitted In Printing]

DEPOSITION OF
SUZANNE KEITH WARREN

At Greensboro, North Carolina
Tuesday, May 22, 2001
8:32 a.m.

Reported by: Ramona J. Crouse

[Read into the record at trial on January 18, 2002]

* * *

[95] Q. Does Volvo have any methodology for determining whether dealers are bidding on the same customer?

A. The current system in place today, the electronic quote system, will flag and identify any incoming quote if there is a similar match in the system.

Q. What do you mean by "a similar match in the system"?

A. Meaning that the – as the – as a submitted customer name – if it matches up to a four-letter series, then the individual looking at the quote has an option – they – there's a – it's flagged by a indicator that they can

click on, which will then shown them anything that matches a four-letter criteria.

Q. Okay. And how long has that been in place?

A. We – the electronic quote system hasn't been in – was rolled out in – in 2000. It was rolled out not to all regions at the same time, and I don't recollect which ones were turned on prior to others. I mean, I don't – I don't remember the [96] time frame when the different regions were turned on to that.

Prior to that, we could do a name search in the mainframe to look for any similar matches.

Q. Well, was there a policy to do that in every – every – every time an RSA request was submitted?

A. It was the responsibility of the district sales manager. If he was knowingly on a quote for a customer outside his district, then he's responsible for contacting his counterpart to discuss the transaction to ensure that everybody was equalized.

Q. How long was that in place?

A. I can speak to how long I've been in the department, and it's been in place since then.

* * *

[102] Q. On a day-to-day basis, in your approvals of these concession amounts which exceed the published level, how frequently do you obtain a price given by a competitor?

A. Just taking a guess here, probably less than ten or 15 percent of the time.

* * *

[131] Q. Okay. What was the market like generally in '97?

A. If memory serves me, '97 we started in the up trend, is when the market took off for heavy [132] trucks.

Q. Okay. And for how long did that up trend continue?

A. Till the first quarter of last year.

Q. Okay. First quarter of 2000?

A. Uh-huh.

Q. All right. Has it been a dramatic decline since the first quarter of 2000?

A. Yes, sir.

Q. Okay.

* * *

Q. Are you aware of any circumstances where an RSA may be adjusted after the fact?

A. I mean, it would –

Q. For example, if a dealer had a situation where he may be losing money on used trucks or the trade, that Volvo would come in and make an adjustment to the RSA.

A. We get requests for additional concession, and it's – we use the exact same process as we would for an original concession. So that would be –

Q. Okay. And then are new invoices generated to reflect those adjustments?

* * *

In the United States District Court
Western District of Arkansas
Fort Smith Division

Docket No. 00-CV-2031 (RTD)

[Caption Omitted In Printing]

[Plaintiff's Exhibits 1, 16, 54, 100, 101, 137, 199, 268, 272 and Defendant's Exhibits 268, 269, 270 are reproduced on the following pages.]

PLAINTIFF'S EXHIBIT 1

* * *

The Company and the Dealer agree:

I. SELLING PRIVILEGE

1.01 Appointment

(a) General. The Company appoints the Dealer as an independent authorized retail dealer for the resale of new Trucks and Parts and Components (together the "Products"), and to provide parts, used truck service, and technical support to customers of Products. The Company may from time to time change its offering of Products without prior notice to the Dealer. The Dealer accepts this appointment subject to the terms of this Agreement, which includes the Company's Portfolio of Criteria, and agrees to conduct its operations in accordance with these terms. This is an exclusive appointment, which means the Company will not give any other dealer rights to locate a facility in the Dealer's Area of Responsibility (as defined in Section 1.02) so long as the Dealer is in compliance with its obligations under this Agreement.

(b) Controlling Individual. The Company enters into this Agreement in reliance on the qualifications of the Controlling Individual(s) identified in the Dealer Statement of Ownership Addendum. The Company and Dealer agree the Controlling Individual and the percentage stated in the Dealer Statement of Ownership Addendum will remain the same, unless a change is made in accordance with Article VIII, Section 8.02.

1.02 Area Of Responsibility

The Area of Responsibility is that territory which is the dealer's area of primary sales, service and customer

support responsibilities. The boundaries of the Area of Responsibility shall be set forth in the Area of Responsibility Addendum provided by the Company. The Company has determined that the Products can be marketed best and serviced most effectively and customers supported best by the dealer in this geographic region. Dealer recognizes that factors which led to this determination may change and that there may be good reason to change the Area of Responsibility in the future. In order to most effectively serve customers and potential customers for the Products, the Company reserves the sole right and discretion to redefine from time to time suitable boundaries for the Dealer's Area of Responsibility and for any other dealer's area of responsibility. If the Company decides to change boundaries because the Dealer is not providing adequate coverage to all or any part of the Area of Responsibility, the Company will not introduce such changes until after giving the Dealer notice and six (6) months to correct the deficiency. In all other cases the Company shall give the Dealer sixty (60) days advance notice of any change in boundaries.

1.03 Portfolio of Criteria

The Dealer shall at all times perform in accordance with and remain in compliance with the terms of the Portfolio of Criteria. The Portfolio of Criteria will be used as a benchmark for business planning, and its terms are subject to review on an annual basis, in connection with the preparation of the Business Plan, or other interval as determined appropriate by the Company.

1.04 Addenda and Attachments

All addenda and other attachments to this Agreement are an integral part hereof. To the extent that such addenda or attachments may require execution by Dealer or Company,

this Agreement shall be of no force or effect until the addenda or attachments have been duly executed.

II. DEALERSHIP OPERATIONS

It is the Dealer's primary responsibility to effectively develop the business of selling and servicing the Products and to support the customers of Products in accordance with Total Customer Focus in the Area of Responsibility. The Company relies upon the Dealer to deal directly with and develop a strong customer base in this territory, and to conduct all of its business activities in a manner which will reflect favorably upon and preserve the goodwill and reputation of the Dealer, the Company and all other Company dealers. All aspects of the dealership business, including, among others, Truck sales, Parts sales, repair service, used truck sales, full service leasing, finance and insurance, and administration, must be given adequate care and attention. Success of the Company, the Dealer and the other Company dealers depends upon establishing a reputation for customer satisfaction in all aspects of the dealership operations.

2.01 Trucks

(a) Truck Sales. The Dealer shall vigorously and aggressively promote in the Area of Responsibility the sale, lease and use of the full range of models of Trucks with specifications appropriate for the customer's intended use. The Dealer shall regularly and systematically solicit all owners and users of Trucks and prospective owners and users of Trucks in the Area of responsibility. In those instances where a customer or a potential customer has expressed a desire to purchase a truck for an application for which the Company has a suitable offering, the Dealer

shall vigorously pursue the marketing of such Truck and in all cases submit to the customer a Truckmatch quotation or other written offer to sell or lease the Truck, and a written statement of the Company's applicable new Product warranties. Since the Dealer is most closely familiar with local conditions and the customer's particular needs, preparation of the Truck's specifications shall be the responsibility of the Dealer. Upon request, the Company will assist the Dealer in pursuing the sale of any Truck. If for any reason the Dealer believes it may be unable to vigorously pursue any transaction, it shall immediately notify the appropriate Company representative, setting forth the name of the customer and a description of the type of vehicle in which the customer is interested, and any special terms and conditions known to the Dealer.

(b) Truck Inventories. The Company shall provide the Dealer with Truck inventory guidelines for unsold Trucks designed to assist the Dealer in developing the sales potential of the Area of Responsibility. The Dealer will carry a representative inventory of unsold Trucks, sufficient to meet or exceed these guidelines.

* * *

2.13 Annual Business Plans And Sales Objectives

On an annual basis or other period specified by the Company, the Dealer shall submit to the Company on forms provided by the Company a Business Plan projecting operating results for the upcoming year or years covering new Truck sales, Parts sales, service sales and used truck sales. The Dealer shall incorporate into its plans the specific sales objectives provided by the Company, which shall be based on some or all of the following factors,

among others: the Dealer's prior sales, the Dealer's present market position, the Company's national, Operating Company and District market positions, the long range plans and objectives of the Company, an analysis of the local market and projected movement in the local market. Such plans shall contain in detail, among other things, analyses of the Dealer's present market position, its short and long term sales objectives and strategies, tactics and programs which the Dealer will implement to achieve its objectives. The Company shall provide the Dealer with such assistance in formulating its sales and marketing plans as is reasonably necessary. The Dealer shall use its best efforts to meet the objectives set forth in the Business Plan.

* * *

V. TERMINATION

5.01 Term of Agreement

This Agreement shall be for a term specified in the Term Addendum, subject to an annual performance review. Unless otherwise stated in the Term Addendum, the term of this Agreement shall be for five years. Each year, the Company shall conduct an annual performance review of the Dealer. If the Dealer has met its obligations under this Agreement, including the Portfolio of Criteria, an additional one year shall be added to the term, so that the term shall be continuously five years. If the Dealer has failed to meet its obligations under this Agreement or the Portfolio of Criteria, the Company may, at its option (i) refuse to modify the term stated in the Term Addendum, so that the term decreases by one year for each year of

such failure or (ii) replace the Term Addendum with a Probationary Status Addendum of a shorter term.

It is the objective of both the Dealer and the Company to have this Agreement continue in effect indefinitely while the Dealer continues to satisfy its obligations and meet its objectives, evidenced by ongoing term extensions. The general provisions of this Agreement may be modified by the Company, as business conditions and other circumstances change over time.

Provisions of Section 5.01 are subject to the provisions in Section 5.04; and neither the Dealer nor the Company waive any of their respective rights under Section 5.04.

5.02 Termination by Mutual Consent

The Dealer and the Company may, by mutual consent, terminate this Agreement at any time.

5.03 Termination by Dealer

The Dealer may terminate this Agreement at any time, at a date specified in a written notice given to the Company at least sixty (60) days prior to the termination date, during which period the Dealer will be expected to continue to perform all of its obligations under this Agreement.

5.04 Termination by the Company for Cause

(a) General. The Company may terminate this Agreement on reasonable advance notice upon the occurrence of any of the following:

(i) Failure of the Dealer to pay any sum due to the Company within thirty (30) days following receipt of notice of nonpayment from the Company.

(ii) Failure of the Dealer to pay any sum due to any financing source or to any other third party within thirty (30) days after demand for payment if such nonpayment does or may result in the Company incurring liability to a third party.

(iii) Loss of an adequate wholesale credit line without implementing a satisfactory substitute within thirty (30) days.

(iv) A change in or resignation or removal of a Controlling Individual except as expressly authorized in this Agreement.

(v) Any attempted or actual sale, assignment or transfer of this Agreement or of any of the Dealer's rights or duties under this Agreement except as expressly authorized in this Agreement.

(vi) The conviction of the Dealer or any Controlling Individual of any felony or any crime which involves moral turpitude or which may adversely affect the business or reputation of the Dealer, the Company or the Products.

(vii) A misrepresentation by the Dealer of a material fact in connection with any application for appointment as a dealer for the Company, or any financial statement or other document submitted by the Dealer under this Agreement, or any claim for compensation or credit for warranty, recall or similar services, or any other claim for payment submitted by the Dealer to the Company.

(viii) Failure by the Dealer to comply with all laws or regulations applicable to the sale or service of Products, including all federal, state and municipal licensing and permit requirements, which failure adversely affects the

Dealer's ability to do business as contemplated by this Agreement.

(ix) Any dispute among Controlling Individuals which, in the opinion of the Company, is likely to adversely affect the business reputation of the dealer, the Company or the Products.

(x) The filing by the Dealer of any petition for relief as a debtor under the Bankruptcy Code or any state insolvency law, any assignment by the Dealer for the benefit of its creditors, or the appointment of any trustee, receiver or similar fiduciary for the Dealer or for all or a substantial part of the Dealer's assets.

(xi) An adjudication or determination by any government agency that the Dealer or a Controlling Individual has committed a deceptive or unfair business practice which, in the opinion of the Company, is likely to adversely affect the business reputation of the Dealer, the Company or the Products.

(xii) An actual or attempted sale by Dealer of any of its principal operating assets which adversely affects the Dealer's ability to do business as contemplated by this Agreement.

(xiii) Failure of the Dealer to conduct regular sales, service and parts operations during customary business hours for five (5) or more consecutive days, unless caused by force majeure, without the prior written consent of the Company.

(xiv) The unauthorized use by the Dealer of the Company's Trademarks.

(xv) A violation by the Dealer of any material provision or requirement of the Portfolio of Criteria except as provided in Section 5.01.

(xvi) Failure of the Dealer to perform any material obligation under this Agreement.

(xvii) A significant act or omission of the Dealer which is damaging to the Company or the network of dealers.

(xviii) Refusal by the Dealer to timely furnish sales, service or financial information and related supporting data, or to permit the Company to examine or audit the Dealer's accounts and records as provided in this Agreement.

(xix) Failure of the Dealer to pay any tax obligation to any governmental authority resulting in any adverse action by that agency against the Dealer, which materially affects the Dealer's performance under this Agreement.

(b) Non-Performance. It is understood and agreed by the parties that the duties and obligations imposed upon the Dealer by this Agreement are intended to be a precondition to the continuation of the relationship between the Dealer and the Company. Dealer's performance under any prior form of Dealer Sales and Service Agreement with the Company may be considered in evaluating Dealer's performance under this Agreement. In the event the Dealer fails to perform any material duty or obligation imposed upon it by this Agreement, the Company may (i) terminate this Agreement upon reasonable notice; or (ii) exercise its rights under Article V, Section 5.01. In the event the Company determines that the Dealer is failing to meet its performance obligations the Company will

notify the Dealer in writing of such failure or failures, will upon request promptly review with the Dealer any aspect of such failure or failures, and will provide Dealer with a reasonable period, to remedy all failures. If the Dealer fails or refuses to remedy all failures within this time period, the Company may terminate this Agreement.

5.05 Rights and Obligations on Termination

Upon termination of this Agreement for any reason, the following will occur:

(i) The Dealer's right to represent the Company and buy, sell or service Products will immediately terminate, except to the extent the Company elects to fill unfilled orders pursuant to Section 5.05(ii). Notwithstanding the foregoing, the Dealer shall have the right to sell or otherwise dispose of Products in its possession at the time of termination which are not purchased by the Company pursuant to Section 5.05(iv).

(ii) The Company will have the option to either cancel or fill any unfilled orders placed by the Dealer for Products. The Company may require that Products delivered subsequent to the earlier of the effective date of termination or the date of notice of termination be paid for on a cash-on-delivery or other basis.

(iii) Sums owed by the Dealer to the Company will be due and payable not later than the effective date of termination, notwithstanding any other prior agreement or course of dealing.

(iv) The Company shall purchase from the Dealer, subject to inspection, any new, unused, and salable trucks in the Dealer's inventory which were purchased from the Company, provided that such trucks (i) were purchased

from the Company not more than one year prior to being tendered for repurchase, (ii) have not been materially altered or modified while in the Dealer's possession, and (iii) do not have specifications which are so unique or unusual so as to render them unsalable in the Company's reasonable judgment. The Company shall also repurchase from Dealer any new, unused and salable Parts in the Dealer's inventory which were purchased from the Company. Such repurchase of Products by the Company shall be in accordance with Company policies as announced from time to time. Amounts payable to the Dealer by virtue of this subsection shall first be credited against the Dealer's liability, if any, to the Company. No payment shall be made to the Dealer for repurchased Products until there has been a full accounting of the Dealer's liability to the Company, including all contingent liabilities. The Dealer shall, as a condition to any repurchase hereunder, fully cooperate with the Company in complying with all applicable bulk transfer laws, and, without limiting the generality of the foregoing, shall execute such documents as are necessary for compliance therewith. The Company shall have no obligation to repurchase any Product from the Dealer unless the Dealer is able to deliver good title thereto, free and clear of all liens and encumbrances, and unless the Dealer has fully complied with Sections 3.04 and 5.05(v).

(v) As a condition precedent to the Company's obligation to make any payments under this Section 5.05, the Dealer will remove from public view all business signs which bear a Company Trademark, service mark or trade name. If such signs belong to the Dealer, the Company will have an option to purchase them at the amount, net of depreciation, at which they are carried on the Dealer's books.

(vi) The Company shall use its best efforts to settle all accounts payable to or by Dealer within sixty (60) days of the date of termination.

5.06 Succession Rights

(a) Designated Successor. Each Controlling Individual may propose a successor to his or her interest by delivering to the Company a completed Application for Designated Successor on the appropriate form supplied by the Company. To qualify the proposed successor must be a full time employee of the dealership and otherwise meet the criteria generally applied by the Company to dealer applicants. The Company will promptly review the Application for Designated Successor and respond to the Controlling Individual with its decision or a request for additional information. If the Application is approved, the person named in the application will become a Designated Successor and the Company will execute the appropriate Successor Addendum to this Agreement. Unless a material change occurs following the execution of the Successor Addendum, upon the death or incapacity of the Controlling Individual the Designated Successor will, with his or her consent, be appointed to replace the deceased or incapacitated Controlling Individual.

(b) Absence of a Successor Addendum. In the event of death or incapacity of a Controlling Individual when there is no executed Successor Addendum or qualified Designated Successor, the Company may terminate this Agreement subject to the following. The remaining Controlling Individuals, if any, and the deceased or incapacitated Controlling Individual's heirs or assignees shall have up to six months following the death or incapacity to

qualify a replacement Controlling Individual in accordance with the rights and procedures set forth in Article VII.

* * *

PLAINTIFF'S EXHIBIT 16

VOLVO
Volvo GM Heavy Truck

7900 National Service Road
P.O. Box 26115
Greensboro, NC 27402-6115
Telephone 910 393-2000

April 28, 1997

Mr. David Reeder
Reeder-Simco Truck Center
3421 South Zero
Fort Smith, AR 72903

Dear David,

Each year, Volvo GM Heavy Truck Corporation performs a review of its dealers. During the review we consider factors that we judge key to determining how successfully our dealers are maintaining their commitments to their contracts and agreements with Volvo GM Heavy Truck (e.g., Dealer Sales and Service Agreement, Annual Marketing and Business Plan, VE D Addendum, VN Commitment and Agreement, etc.).

The criteria considered this year included the following:

Truck Retails Achieved vs. Business Plan Objective
Parts Purchases Achieved vs. Business Plan Objective
VE D Engines Retailed vs. Business Plan Objective
Owned Net Working Capital Maintained vs. Business Plan Standard
FACTS Statement Submission
VN Criteria Compliance

Attached you will find a summary of our review of your 1996 performance. The results of this review necessitates our issuing a one year Probationary Status Addendum to your Dealer Sales and Service Agreement beginning

March 31, 1997. In addition, a Deficiency Cure Schedule has been included which defines acceptable levels of performance which must be met in order to receive a standard term addendum for your Dealer Sales and Service Agreement. Failure to meet these levels of performance by March 31, 1998 may force us to seek remedies available to us under the terms and conditions of the Dealer Sales and Service Agreement.

Volvo GM Heavy Truck Corporation will assist your organization in achieving compliance with your contractual commitments. Appropriate members of your district team will be in contact with you shortly to assist you in developing a plan to rectify the noted shortfalls as you move forward in 1997.

If you have any questions regarding the attached or the process of earning a longer term addendum, please feel free to contact Barbara Rossetti at (910) 393-2966.

Sincerely,

/s/ Chris Patterson
Chris Patterson
Executive Vice President
Sales and Marketing

Enclosure

PROBATIONARY

TERM ADDENDUM
TO
VOLVO GM HEAVY TRUCK CORPORATION
Dealer Sales and Service Agreement

In accordance with Article V, Section 5.01 of the Agreement, the term of this agreement between **Volvo GM Heavy Truck Corporation** (the "Company") and,

DEALER:	**REEDER-SIMCO TRUCK CENTER**
ADDRESS:	**3421 SOUTH ZERO**
CITY, STATE, ZIP:	**FORT SMITH AR 72903**
EFFECTIVE DATE:	**MARCH 31, 1997**
EXPIRATION DATE:	**MARCH 31, 1998**

Volvo GM Heavy Truck Corporation

By: /s/ S. Boris
Director, Distribution and
Dealer Development

PLAINTIFF'S EXHIBIT 54

VOLVO

Volvo Trucks North America, Inc.

Chris W. Patterson
Executive Vice President
Sales and Marketing

December 1, 1999

By Certified Mail, Return Receipt Requested

Mr. David Reeder
Reeder-Simco Truck Center
3421 South Zero
Fort Smith, AR 72903

Dear Mr. Reeder:

This letter is to inform you that Volvo Trucks North America, Inc. has reviewed your performance through the first nine months of 1999, and it appears that you will not meet the mutually acceptable goals established for your AOR and Dealership by year end. Your current year-to-date performance follows your having been placed on Probationary Status for 1998 due to unacceptable performance levels.

Should your full year 1999 performance continue at this unacceptable level, Volvo Trucks North America, Inc. hereby gives notice it will terminate your Dealer Sales and Service Agreement, effective March 31, 2000. This letter serves as official notice of cancellation of the aforementioned Agreement. The reasons for this action are as follows:

1) Non-performance in the area of truck sales – Truck Retails Achieved vs. Business Plan Objective

2) Non-performance in the area of Volvo engine sales – VED Engines Retailed vs. Business Plan Objective

3) Non-performance in the area of parts purchases – Parts Purchases Achieved vs Business Plan Objective

4) Other issues that have been previously discussed

Should you have any questions, please contact David Winner at (336) 393-2966.

Sincerely,

/s/ Chris Patterson
Chris Patterson

Cc: Ms. Patricia Stroud, Director
Arkansas Motor Vehicle Commission
101 East Capital
Suite 210
Little Rock, AR 72201

PLAINTIFF'S EXHIBIT 100

[Hersher, David]
Memo Message panel 98-04-04 09:52:27
Command =>
Destination . . . => VTNA.DLRDEV
COMMUNICATION TO DEALERS Received from
Memo title . . =>. MAR ISSUE
Page 1(10) Line 1 Col 1(70)

– – – Received from VTNA.DLRDEV 910 393-2306
98-03-31 14:08

VOLVO TRUCKS NORTH AMERICA, INC
"GUSTAFSON LETTER"
March 1996

RELEASE
03/31/98

MARCO MEETING SETS PATH

The North American Dealer Conference held in Marco Island, Florida March 1-4 was a huge success. Day-one activities outlined the course for the future for Volvo Trucks and the transportation industry.

Marc keynoted the meeting by stating that Volvo intends to achieve the best distribution network in the business. Speaking to customer demands for increased service among fierce competition, Marc indicated that 50% of Volvo Truck dealers would not be in business in the next few years. His comments reinforced Volvo's position that dealers, large and small, who take care of the customer, support Volvo products, and make the investments in their business, will be profitable as Volvo dealers for many years to come.

Day two of the meeting offered specifics about the programs that will make Volvo and its distribution network unique among its peers. Volvo Actions Service (VAS), a one-of-a-kind call service already a success in Europe, was introduced to North America. Logistic Parts Agreement (LPA), a virtual parts inventory exchange was also rolled out as a way to increase turns while supporting your customers with a higher fill rate. The MVP program – a 21 day delivery concept to eliminate flooring cost was also introduced. These were just three examples of the revolutionary programs that Volvo is introducing. You will be notified when a summary of the meeting material is available.

SUPER BOWL CAMPAIGN SUPER

Results from the Super Bowl Commercial and Promotion exceeded target in all respects. USA Today rated the Volvo Trucks North America commercial #1 among automotive and #1 among business-to-business advertisers.

Our own research shows that we had a very positive effect within our target audience and the public at large.

Best Drive in the Game entries also exceeded target. A direct mail campaign was launched in March targeting those prospects. The campaign features a free calling card with a test drive and a $1000 refund after the first payment on a 770 financed by VTFNA.

NC TRUCKER BEATS THE ODDS!

Since Super Bowl Sunday, ten finalists have been dreaming of hearing their name announced during Volvo Trucks' "Best Drive in the Game" sweepstakes grand-prize presentation at the Mid-America Trucking Show. But, only one finalist, Donald Norman, East Bend, N.C., left the show as the owner of a new Volvo 770 highway tractor, valued at $120,000.

"I've been driving trucks for 42 years and the Volvo 770 is my first new truck – and it's the best one on the road," said Norman.

For Norman, winning the Volvo 770 marks the second time this year he's beaten the odds. Norman was seriously injured six months ago and has just returned to his job as an owner/operator and proprietor at East Bend Equipment, Inc., East Bend, N.C. Now, Norman is looking forward to growing his business with his new Volvo truck.

The on-stage award ceremony took place in front of 18,000 trucking professionals during the Volvo-sponsored Brooks & Dunn concert at the Mid-America Trucking Show in Louisville, Ky., March 21. Mid-America is the trucking industry's largest trade show. Norman and nine other finalists in the "Best Drive in the Game" sweepstakes received an all-expenses-paid trip for two to participate in the award ceremony.

In addition to the new truck, Chevron Lubricants will pay for the cost of all lubricants Norman purchases at a Volvo dealership in the first five years of ownership. Chevron is the primary lubricant supplier to Volvo Trucks.

VOLVO ENGINE SUPPORT MATERIAL ON THE WAY

Volvo is beginning to ship special tools, diagnostic tools and service literature to your dealership. Parts for the new Volvo engine began shipping in late February and early March.

CNN COVERS VOLVO TRUCKS' USE OF GENETIC ALGORITHMS

In several reports aired by CNN International. CNN WorldView and CNN Science and Technology Week, the network profiled Volvo Trucks' use of production

scheduling software at NRV that is based on genetic algorithms. Volvo Trucks is the first OEM in the automotive industry to use this technology.

Briefly, the technology optimizes line sequencing based on more than 80 constraints in order to ensure assembly workers have the necessary time to properly build our products. The software has taken a process that once consumed days and now allows the plant to develop schedules overnight.

NEW REGIONAL VICE PRESIDENT NAMED

Jack Conaghan will be joining Volvo Trucks North America as Regional Vice President – Midwest. He will report to Steve Larkin. Jack will be heading up the newly formed Midwest Region. He will be based in Chicago, working from his home until our new regional office opens in the Spring. Jack has extensive experience in the heavy truck industry. He started his career 25 years ago with Navistar International Transportation Corporation, and over the years, has held various management positions with Navistar. Most recently, he was Manager of Navistar's Chicago Used Truck Center.

VOLVO SPONSORS HIGHWAY ANGELS PROGRAM

Volvo Trucks North America is proud to announce its sponsorship of the Highway Angel Program. For the next three years, Volvo Trucks will be the exclusive sponsor of this grass-roots effort, which was developed by the Truckload Carriers Association (TCA) to publicly recognize truckers for helping motorists.

This effort is a perfect fit with our strategy to establish Volvo as the company committed to improving truckers' lifestyles. We are also proud to sponsor this program because we believe it is critical to our

customers' success to elevate the image of the professional trucker in their own eyes and the eyes of the public.

In brief, the Highway Angel Program allows anyone to nominate a trucker who has helped another motorist. For example, the trucker may have changed a flat tire or rescued an accident victim. After the incident is verified by TCA, the trucker receives a patch, lapel pin and certificate recognizing his or her assistance. TCA will also send a letter to the company the trucker works for and to the person who made the nomination.

Like TCA, Volvo Trucks is committed to recognizing those truckers who go out of their way to help. The Highway Angel Program does that in a meaningful way.

VOLVO DEALER INTRANET

Now that the Volvo Dealer Intranet is rolling out to all dealers it is very important that you begin replacing any "dumb" terminals and older model PCs with new hardware. Volvo has provided you with a list of PC hardware specifications to help you make your purchasing decision. For the latest recommendations please call 336-393-2425. You will need a PC running Windows 95 to be able to access any Volvo intranet software. The new Parts system due out in September 1998 will only work with a new PC. After that date your "dumb" terminals will be obsolete.

---- 98-03-31 14:08 --- Sent to ----------
– VTNAD PRINCPAL US DEALER PRINCIPALS

PLAINTIFF'S EXHIBIT 101

Memo Message panel 98-01-02 4:33:25
Command =>
Destination . . . => VTNA.VGH360BR
BARBARA ROSSETTI (EXT 296 Received from
Memo title . . .=> DEC 97 UPDATE
Page 13(15) Line 193 Col 1(66)

Due to the 2000 glitch

The Volvo Vision was discussed:

Volvo challenge	Volvo Vision
* too many dealers	* fewer dealers, larger markets
* under performing dealers	* Professionally managed
dealerships* low profitability (under 4% net goal)	* Consistent profitability 4%
* Fleet trucks	* Premium Market
* Minimum dealers in Used Trucks.	* Need dealers in the Used Truck business
* Average Market size 1100	* 2500 Market size
* Owners now 146	* vision 75
* Full line dealers 169	* vision 175

PLAINTIFF'S EXHIBIT 199

ID	Model	TruckNo	LineNo	Text
386178	VNL64TDAY	248419	00001	
386179	VNL64TDAY	248419	00002	NEW RIVER PLANT PAGE 1
386180	VNL64TDAY	248419	00003	ROUTE 643
386181	VNL64TDAY	248419	00004	DUBLIN, VA 24084
386182	VNL64TDAY	248419	00005	DEALER..: 5758D VEHICLE I.D. NBR: 4V4ND2JF9 YN248419
386183	VNL64TDAY	248419	00006	GVWR: 50000
386184	VNL64TDAY	248419	00007	DEALER INVOICE NUMBER..: 99/33958
386185	VNL64TDAY	248419	00008	ORDER NO: HILAND-99 IN-VOICE DATE. . . . : 10/07/1999
386186	VNL64TDAY	248419	00009	CUSTOMER:
386187	VNL64TDAY	248419	000010	SOLD TO.: SOUTHWEST MISSOURI TRK CTR,INC HILAND DAIRY INC
386188	VNL64TDAY	248419	000011	2527 N. EAST-GATE 1133 EAST KEARNEY
386189	VNL64TDAY	248419	000012	SPRINGFIELD MO 65803 SPRINGFIELD MO 65803

386190	VNL64TDAY	248419	000013	
386191	VNL64TDAY	248419	000014	
386192	VNL64TDAY	248419	000015	DISPATCH DATE . . . : 10/07/1999
386193	VNL64TDAY	248419	000016	SHIP TO.: 2527 N. EASTGATE OPERATING CO. . . . : SOUTH-WEST
386194	VNL64TDAY	248419	000017	SPRINGFIELD MO 65803 POST-MARK DATE . . . : 08/21/1999
386195	VNL64TDAY	248419	000018	————
386196	VNL64TDAY	248419	000019	MAJOR COMPO-NENT DESCRIP-TION DEALER LIST DEALER NET
386197	VNL64TDAY	248419	000020	MODEL: 2000 VNL64TDAY CHASSIS $ 71,996 $ 57,597
386198	VNL64TDAY	248419	000021	OPTIONS $ 11,603 $ 9,282
386199	VNL64TDAY	248419	000022	ENGINE: CUM 14L370HP&1800 RPM, 1450LBFT@1200 RPM
386200	VNL64TDAY	248419	000023	SERIAL NUMBER: S11977436
386201	VNL64TDAY	248419	000024	TRANSMISSION: FULLER RTX-14709H, 9 SPEED

386202	VNL64TDAY	248419	000025	SERIAL NUMBER: K0037536
386203	VNL64TDAY	248419	000026	FRONT AXLE: 12,000 LB FRONT AXLE
386204	VNL64TDAY	248419	000027	SERIAL NUMBER: AVF99202085
386205	VNL64TDAY	248419	000028	REAR AXLE: MERITOR RT40-145 40,000 LB
386206	VNL64TDAY	248419	000029	SERIAL NUMBER: AVA99293041 AVA99293190
386207	VNL64TDAY	248419	000030	SUSPENSION: 38,000 LB REAR AXLE LOAD (17 TONNES)
386208	VNL64TDAY	248419	000031	———— ————
386209	VNL64TDAY	248419	000032	TOTAL: $ 83,599 $ 66,879
386210	VNL64TDAY	248419	000033	FREIGHT: $ 900
386211	VNL64TDAY	248419	000034	CONCESSION AMOUNT: QUOTE # I701101 8.5% CHASSIS $ 4,896-
386212	VNL64TDAY	248419	000035	CONCESSION AMOUNT: QUOTE # I701101 8.5% OPTIONS $ 789-
386213	VNL64TDAY	248419	000036	PRICE ADJUST-MENT: $ 796

386214	VNL64TDAY	248419	000037	FLOORING: 15 DAYS FLOORING STD $ 0
386215	VNL64TDAY	248419	000038	GMAC
386216	VNL64TDAY	248419	000039	7400 W. 110TH ST.
386217	VNL64TDAY	248419	000040	SUITE 400
386218	VNL64TDAY	248419	000041	OVERLAND PARK KS 66210
386219	VNL64TDAY	248419	000042	MSO LOCATION: DEALER
386220	VNL64TDAY	248419	000043	———
386221	VNL64TDAY	248419	000044	TOTAL DEALER COST DUE: $ 62,890
386222	VNL64TDAY	248419	000045	NOTE: CLAIMS FOR CREDIT MUST BE RE-CEIVED BY TRUCK PRICING
386223	VNL64TDAY	248419	000046	WITHIN 60 DAYS TO RECEIVE CONSIDERATION.
386224	VNL64TDAY	248419	000047	NEW RIVER PLANT PAGE 2
386225	VNL64TDAY	248419	000048	INVOICE NBR: 99/33958
386226	VNL64TDAY	248419	000049	SERIAL NBR: 248419 MODEL: VNL64TDAY DEALER: 5758D
386227	VNL64TDAY	248419	000050	OPTION SPECI-FICATIONS LIST
386228	VNL64TDAY	248419	000051	CODE PRICE

386229	VNL64TDAY	248419	000052	BASE MODEL
386230	VNL64TDAY	248419	000053	004-653 VNL64T 0
386231	VNL64TDAY	248419	000054	007-006 VNL64T DAY 71,996
386232	VNL64TDAY	248419	000055	2C-D1 STD NON SLEEPER CAB 0
386233	VNL64TDAY	248419	000056	ENGINE AND EQUIPMENT
386234	VNL64TDAY	248419	000057	101-OC7 CUM-MINS N14 370HP 1800RPM 1450 LB-FT 3,815
386235	VNL64TDAY	248419	000058	HA-XR CUM 14L 370HP&1800RPM, 1450LBFT@1200 RPM STD
386236	VNL64TDAY	248419	000059	102-370 370 HORSEPOWER STD
386237	VNL64TDAY	248419	000060	KU-11 80 DBA USA EXTERNAL NOISE REQUIRE-MENT STD
386238	VNL64TDAY	248419	000061	974-X98 NO EXTE-RIOR NOISE TEST REQUIRED STD
386239	VNL64TDAY	248419	000062	JA-BA 111 DEG F, 44 DEG C COOL-ING CAPACITY STD
386240	VNL64TDAY	248419	000063	HL-10 SILICONE RADIATOR & HEATER HOSES 67

386241	VNL64TDAY	248419	000064	208-012 KYSOR ON/OFF FAN CLUTCH 0
386242	VNL64TDAY	248419	000065	K0-D1 TURNED OUT EXHAUST STACK EXTEN-SION 17
386243	VNL64TDAY	248419	000066	KN-B1 STAINLESS STEEL EXHAUST SHIELD 19
386244	VNL64TDAY	248419	000067	VW-BP BENDIX 16.5 CFM TUFLO 750 COMPRESSOR 466
386245	VNL64TDAY	248419	000068	5N-A1 PHILLIPS 120V 1500W LH RECPT BLOCK HTR 79
386246	VNL64TDAY	248419	000069	HT-F2 C-BRAKE BY JACOBS, 3 POSITION SWITCH 1,796
386247	VNL64TDAY	248419	000070	HR-D1 SIDE MOUNTED ENGINE OIL CHECK & FILL 54
386248	VNL64TDAY	248419	000071	TRANSMISSION
386249	VNL64TDAY	248419	000072	RW-7V FULLER RTX-14709H, 9 SPEED 282
386250	VNL64TDAY	248419	000073	7R-B1 SYNTHETIC TRANSMISSION LUBRICANT 53

386251	VNL64TDAY	248419	000074	RB-A1 EXTENDED LUBE LINE 7
386252	VNL64TDAY	248419	000075	FRONT AXLE
386253	VNL64TDAY	248419	000076	370-122 MERITOR FF966 12,000 LB CAP 0
386254	VNL64TDAY	248419	000077	FX-D1 12,000 LB FRONT AXLE STD
386255	VNL64TDAY	248419	000078	XA-BP SHEPPARD M100P POWER STEERING GEAR 0
386256	VNL64TDAY	248419	000079	7V-B1 SYNTHETIC FRONT AXLE LUBRICANT 3
386257	VNL64TDAY	248419	000080	REAR AXLE
386258	VNL64TDAY	248419	000081	330-440 MERITOR RT40-145 40,000 LB 0
386259	VNL64TDAY	248419	000082	R2-K1 MERITOR RT40-145 40,000 LB STD
386260	VNL64TDAY	248419	000083	760-380 38,000 # GAWR STD
386261	VNL64TDAY	248419	000084	TA-F8 3.90 REAR AXLE RATIO 0
386262	VNL64TDAY	248419	000085	TU-A1 FULL LOCKING WHEEL DIFFER-ENTIAL 638
386263	VNL64TDAY	248419	000086	7W-B1 SYN-THETIC REAR AXLE LUBRI-CANT 109

386264	VNL64TDAY	248419	000087	350-286 38,000 LB VOLVO AIR SUSP 52" SPACING 823
386265	VNL64TDAY	248419	000088	F1-HA 38,000 LB REAR AXLE LOAD (17 TONNES) STD
386266	VNL64TDAY	248419	000089	NEW RIVER PLANT PAGE 3
386267	VNL64TDAY	248419	000090	INVOICE NBR: 99/33958
386268	VNL64TDAY	248419	000091	SERIAL NBR: 248419 MODEL: VNL64TDAY DEALER: 5758D
386269	VNL64TDAY	248419	000092	OPTION SPECI-FICATIONS LIST
386270	VNL64TDAY	248419	000093	CODE PRICE
386271	VNL64TDAY	248419	000094	CHASSIS
386272	VNL64TDAY	248419	000095	400-176 176" WHEELBASE 186
386273	VNL64TDAY	248419	000096	403-003 .28"X11.81" STRAIGHT STEEL FRAME RAILS 125
386274	VNL64TDAY	248419	000097	YA-B1 .28" (7MM) FRAME SECTION THICKNESS STD
386275	VNL64TDAY	248419	000098	402-056 56" OVERHANG 20
386276	VNL64TDAY	248419	000099	490-231 HOLLAND FW35 AIR SLIDE - LH RELEASE 289

386277	VNL64TDAY	248419	0000100	488-480 48.0" FIFTH WHEEL HEIGHT 0
386278	VNL64TDAY	248419	0000101	487-240 24.0 INCHES OF FIFTH WHEEL TRAVEL 30
386279	VNL64TDAY	248419	0000102	424-023 DUAL 100 GAL 26 DIA UNPTD ALUM 465
386280	VNL64TDAY	248419	0000103	J9-EW 100 GAL RH FUEL TANK STD
386281	VNL64TDAY	248419	0000104	425-002 NO CHASSIS FAIR-ING W/CUSTOM CAB SKIRT 258-
386282	VNL64TDAY	248419	0000105	52-B1 DETACH-ABLE TRAILER CABLE 16
386283	VNL64TDAY	248419	0000106	7K-BA LH BOC ACCESS W/30" ALUM DECK PLATE 189
386284	VNL64TDAY	248419	0000107	68-E1 RUBBER QUARTER FENDER 94
386285	VNL64TDAY	248419	0000108	CAB AND EQUIPMENT
386286	VNL64TDAY	248419	0000109	4R-A1 ROOF FAIRING WITH-OUT LIGHT BOX 726

386287	VNL64TDAY	248419	0000110	H8-A1 VINYL WINTERFRONT AHEAD OF GRILLE 50
386288	VNL64TDAY	248419	0000111	LZ-D1 DUAL TRUMPET AIR HORN MTD UNDER CAB 35
386289	VNL64TDAY	248419	0000112	3G-C1 HEATED, POWER AXIS MIRROR, BOTH SIDES 244
386290	VNL64TDAY	248419	0000113	43-50 DELETE DOWN VIEW MIRROR OVER PASS DOOR 9-
386291	VNL64TDAY	248419	0000114	4N-B1 FBGLS EXT SUNVISOR W/LED MARKER LAMPS 100
386292	VNL64TDAY	248419	0000115	520-013 NATIONAL COMFORT AIR SUSP HB W/ADJ HR 132
386293	VNL64TDAY	248419	0000116	D7-D1 VELOUR SEAT UPHOLSTERY 0
386294	VNL64TDAY	248419	0000117	3P-A1 INBOARD DRIVER SEAT ARMREST 27
386295	VNL64TDAY	248419	0000118	DB-B1 BURLWOOD ACCENT ON DASH 59

386296	VNL64TDAY	248419	0000119	N6-F2 FULL INSTRUMENT 6X4 GAUGE PACKAGE 191
386297	VNL64TDAY	248419	0000120	N5-A1 SINGLE BOC SPOTTING LAMP, FLUSH MTD 34
386298	VNL64TDAY	248419	0000121	NG-B1 TWO RECTANGULAR FOG LAMPS-WHITE 117
386299	VNL64TDAY	248419	0000122	NH-Z1 NO DRIVING LAMPS PROVIDED 0
386300	VNL64TDAY	248419	0000123	LS-F1 HEADLAMPS W/O DAYTIME RUNNING LIGHTS 17-
386301	VNL64TDAY	248419	0000124	PW-A1 DASH MTD HEADLAMP INTERRUPTER SWITCH 47
386302	VNL64TDAY	248419	0000125	NE-D1 DUAL TRUCKLITE SUPER 40 W/SEP BACKUP 60
386303	VNL64TDAY	248419	0000126	5D-05 AM/FM STEREO W/WEATHER BAND 368
386304	VNL64TDAY	248419	0000127	5J-A1 DASH MOUNTED CB RADIO HOLD DOWN 35

386305	VNL64TDAY	248419	0000128	5B-C1 DUAL INTEGRAL MIR-ROR MTD CB ANT W/LEAD 59
386306	VNL64TDAY	248419	0000129	20-001 BASIC UNIQUE KEY (4 KEYS/UNIT) 14
386307	VNL64TDAY	248419	0000130	PAINT
386308	VNL64TDAY	248419	0000131	950-800 SINGLE COLOR PAINT STD
386309	VNL64TDAY	248419	0000132	955-022 VOLVO SUPER LUSTER-SHIELD SOLID 0
386310	VNL64TDAY	248419	0000133	980-008 WHITE S/W 42075 0
386311	VNL64TDAY	248419	0000134	981-998 NO SEC-OND CAB COLOR PROVIDED STD
386312	VNL64TDAY	248419	0000135	NEW RIVER PLANT PAGE 4
386313	VNL64TDAY	248419	0000136	INVOICE NBR: 99/33958
386314	VNL64TDAY	248419	0000137	SERIAL NBR: 248419 MODEL: VNL64TDAY DEALER: 5758D
386315	VNL64TDAY	248419	0000138	OPTION SPECI-FICATIONS LIST
386316	VNL64TDAY	248419	0000139	CODE PRICE
386317	VNL64TDAY	248419	0000140	PAINT
386318	VNL64TDAY	248419	0000141	986-040 BLACK 0

386319	VNL64TDAY	248419	0000142	987-950 BUMPER COLOR SAME AS FIRST CAB COLOR 0
386320	VNL64TDAY	248419	0000143	992-950 CHASSIS FAIRING SAME AS 1ST CAB COLOR 0
386321	VNL64TDAY	248419	0000144	988-401 STEEL-PPTD WHITE, ALUM/PROSTEEL-UNPTD 0
386322	VNL64TDAY	248419	0000145	989-949 SPOKE WHEEL/HUB COLOR SAME AS CHASSIS 0
386323	VNL64TDAY	248419	0000146	TIRES AND WHEELS
386324	VNL64TDAY	248419	0000147	084-001 ACCUR STL PPTD WHT 22.5X8.25 286BC 5HH STD
386325	VNL64TDAY	248419	0000148	0K-A1 STEEL FRONT AXLE HUBS 53-
386326	VNL64TDAY	248419	0000149	093-048 275/80R22.5G MICH-ELIN XZA2 STD
386327	VNL64TDAY	248419	0000150	931-412 MICH-ELIN XZA2 STD
386328	VNL64TDAY	248419	0000151	085-001 ACCUR STL PPTD WHT 22.5X8.25 286BC 5HH STD

386329	VNL64TDAY	248419	0000152	0L-A1 STEEL DRIVE AXLE HUBS 152-
386330	VNL64TDAY	248419	0000153	094-004 275/ 80R22.5G MICH- ELIN PXDHT 152
386331	VNL64TDAY	248419	0000154	934-344 MICH- ELIN PXDHT STD
386332	VNL64TDAY	248419	0000155	ADDITIONAL OPTIONS
386333	VNL64TDAY	248419	0000156	978-015 15 DAYS FLOORING 0
386334	VNL64TDAY	248419	0000157	998-007 ORDER PROCESSED BY GHM 0
386335	VNL64TDAY	248420	00001	

PLAINTIFF'S EXHIBIT 268

REEDER-SIMCO GMC, INC.

RECAP OF FINANCIAL STATEMENTS (SUMMARY OF OPERATING REPORTS)

Year	Total Units Sold	Reeder Gross Profit	Reeder Average GP Per Unit
1990	166	269,140	1,621
1991	38	128,694	3,387
1992	272	563,582	2,072
1993	34	83,205	2,447
1994	65	169,215	2,603
1995	72	181,166	2,516
1996	66	165,499	2,508
1997	85	199,966	2,353
1998	34	102,629	3,019
1999	18	74,207	4,123
2000	8	26,327	3,291

DEFENDANT'S EXHIBIT 268

SPECIAL PRICE CONFIRMATION
Volvo GM Heavy Truck
(FORM MUST BE FILLED OUT COMPLETELY)

EAST FAX # 910-393-2970
WEST FAX # 910-393-4853

DATE 1-15-98 DEALER FAX # 417 869-1900

DEALER NAME Southwest Mo. TrkCtr QUOTE # 3970101

CUSTOMER Hiland Dairy Div/DFA QTR/YR DEL 3

LOCATION Spfld, MO SALESPERSON Lee Ochs

DLR CODE 5758D CUTOMER CODE DIST #

PHONE # 417 809 0566 DIST MGR Truta

QUANTITY 16	QUANTITY
MODEL VNL 64T YR 2000	MODEL YR
SLEEPER TYPE (VN) Day Cab	SLEEPER TYPE (VN)
SERIAL #	SERIAL #
CHASSIS DNET $ 57597	CHASSIS DNET $
OPTIONS DNET $ 9102	OPTIONS DNET $
TOTAL DNET $ 66,699	TOTAL DNET $
GROSS PROFIT $ 1000	GROSS PROFIT $
CONC OFF INV $	CONC OFF INV $
CONC REQ % - $ 7.5%	CONC REQ % - $

(CONCESSION SHOULD BE IN $ FOR STOCK UNITS AND % FOR NEW ORDERS)

CONC APPROVED 7.5	CONC APPROVED

APPROVED BY Des Fuller/M. Truta DATE 1/18/99

COMPETITION FLT SIZE/30 FIN SOURCE Cash

ENGCumm TRANEaton/Fulla R/ARockwell TIRESMichelin

*Hiland is a division of DFA and concessions need to be similar

STOCK TRUCK CONCESSIONS CAN BE CLAIMED ON DCS SYSTEM – UNIT MUST BE WARRANTY REGISTERED BEFORE ANY CLAIMS WILL BE PROCESSED.

[FAXED]

DEFENDANT'S EXHIBIT 270

SPECIAL PRICE CONFIRMATION
Volvo GM Heavy Truck
(FORM MUST BE FILLED OUT COMPLETELY)

EAST FAX # 910-393-2970
WEST FAX # 910-393-4853

DATE 8-19-99 DEALER FAX # 417 869-1900

DEALER NAME Southwest Mo. Truck Ctr QUOTE # I701101

CUSTOMER Hiland Dairy/Div DFA QTR/YR DEL 4th

LOCATION Spfld, MO SALESPERSON Ochs

DLR CODE 5758D CUTOMER CODE ____ DIST # ____

PHONE # 417 869 0566 DIST MGR Truta

QUANTITY 12	QUANTITY
MODEL VNL69T YR 2000	MODEL YR
SLEEPER TYPE (VN) Non	SLEEPER TYPE (VN)
SERIAL # –	SERIAL #
CHASSIS DNET $57597	CHASSIS DNET $
OPTIONS DNET $9282	OPTIONS DNET $
price around 870	
TOTAL DNET $67749	TOTAL DNET $
GROSS PROFIT $1000	GROSS PROFIT $
CONC OFF INV $	CONC OFF INV $
CONC REQ % - $8.5 Per Truta	CONC REQ % - $

(CONCESSION SHOULD BE IN $ FOR STOCK UNITS AND % FOR NEW ORDERS)

CONC APPROVED 8.5% CONC APPROVED

APPROVED BY Mike DATE 8/20/99

COMPETITION DH FLT SIZE ~~108~~ 130 FIN SOURCE Cash
ENG CummTRAN Eaton/Fuller R/A Rockwell TIRES Michelin
Hiland is a div. of DFA and concessions need to be similar
STOCK TRUCK CONCESSIONS CAN BE CLAIMED ON DCS SYSTEM – UNIT MUST BE WARRANTY REGISTERED BEFORE ANY CLAIMS WILL BE PROCESSED

In the United States District Court
Western District of Arkansas
Fort Smith Division

Docket No. 00-CV-2031 (RTD)

[Caption Omitted In Printing]

JURY INSTRUCTIONS 18, 19, and 22

(I)

INSTRUCTION NO. 18

PRICE DISCRIMINATION – "HARM TO COMPETITION" DEFINED

(ROBINSON-PATMAN ACT, 15 U.S.C. § 13(a))

PLAINTIFF MUST SHOW THERE IS A REASONABLE POSSIBILITY THAT THE ALLEGED PRICE DISCRIMINATION MAY HAVE HARMED COMPETITION. IN ORDER TO ESTABLISH THIS ELEMENT OF ITS CLAIM, PLAINTIFF MUST PROVE A SUBSTANTIAL DIFFERENCE IN PRICE IN SALES BY DEFENDANT TO PLAINTIFF AND OTHER COMPETING VOLVO DEALERS OVER A SIGNIFICANT PERIOD OF TIME. THIS REQUIRES PLAINTIFF TO SHOW THAT IT AND THE OTHER VOLVO DEALER(S) WERE RETAIL DEALERS WITHIN THE SAME GEOGRAPHIC MARKET AND THAT THE EFFECT OF THE PRICE. DIFFERENTIAL WAS TO ALLOW THE OTHER VOLVO DEALER(S) TO DRAW SALES OR PROFITS AWAY FROM PLAINTIFF.

THE INFERENCE OF COMPETITIVE INJURY MAY BE OVERCOME OR REBUTTED IF YOU FIND THAT DEFENDANT SHOWED THAT ANY LOST SALES OR PROFITS WERE NOT CAUSED BY THE PRICE DIFFERENTIAL.

DEFENDANT MAY ALSO OVERCOME THE INFERENCE OF COMPETITIVE INJURY BY SHOWING THAT ITS PRICING METHODS, SUCH AS DISCOUNTS TO NEW CUSTOMERS, ACTUALLY HAD THE EFFECT OF INCREASING COMPETITION RATHER THAN DECREASING IT. IF YOU FIND AND DETERMINE THAT THE OFFERING OF SPECIAL DISCOUNTS TO NEW CUSTOMERS AS AN INDUCEMENT TO PURCHASING DEFENDANT'S TRUCKS TENDED TO PROMOTE, RATHER THAN INHIBIT, COMPETITION, YOU SHOULD FIND THAT THERE WAS NO VIOLATION OF THE ROBINSON-PATMAN ACT.

IF HOWEVER, YOU FIND THAT PLAINTIFF ACTUALLY LOST SOME SALE TO A COMPETING VOLVO DEALER AS A RESULT OF THE ALLEGED PRICE DISCRIMINATION, THEN COMPETITION HAS BEEN HARMED TO THAT EXTENT.

IF YOU FIND THERE IS A REASONABLE POSSIBILITY THAT DEFENDANT'S ALLEGED DISCRIMINATORY PRICING MAY HAVE HARMED COMPETITION, THEN YOU MUST FIND THAT PLAINTIFF HAS ESTABLISHED THIS ELEMENT OF ITS CLAIM.

3A KEVIN F. O'MALLEY ET AL., FEDERAL JURY PRACTICE AND INSTRUCTIONS §§150.205, 207 (5th ed. 2001) (Modified).

INSTRUCTION NO. 19

PRICE DISCRIMINATION-CAUSATION

(ROBINSON-PATMAN ACT, 15 U.S.C. § 13(a))

IF YOU FIND THAT DEFENDANT HAS VIOLATED THE ROBINSON-PATMAN ACT AS ALLEGED BY PLAINTIFF, THEN YOU MUST DECIDE IF PLAINTIFF IS ENTITLED TO RECOVER ANY DAMAGES FROM DEFENDANT.

IN ORDER FOR PLAINTIFF TO ESTABLISH THAT IT IS ENTITLED TO RECOVER DAMAGES, IT MUST PROVE THAT IT WAS INJURED AS A RESULT OF DEFENDANT'S ALLEGED PRICE DISCRIMINATION. THIS IS SOMETIMES REFERRED TO AS PROVING "CAUSATION" OR "FACT OF DAMAGE."

PROVING CAUSATION DOES NOT REQUIRE PLAINTIFF TO PROVE THE DOLLAR VALUE OF ITS INJURY. IT REQUIRES ONLY THAT PLAINTIFF PROVE THAT IT WAS IN FACT INJURED BY DEFENDANT'S ALLEGED PRICE DISCRIMINATION. IT IS IMPORTANT FOR YOU TO UNDERSTAND THAT "INJURY" AND "AMOUNT OF DAMAGE" ARE TWO DIFFERENT CONCEPTS. YOU CANNOT CONSIDER THE AMOUNT OF DAMAGE UNLESS AND UNTIL YOU HAVE CONCLUDED THAT PLAINTIFF HAS ESTABLISHED THAT IT WAS IN FACT INJURED.

TO ESTABLISH INJURY, PLAINTIFF MUST HAVE OFFERED EVIDENCE SHOWING AS A MATTER OF FACT AND WITH A FAIR DEGREE OF CERTAINTY THAT DEFENDANT'S ALLEGED PRICE DISCRIMINATION WAS A MATERIAL CAUSE OF PLAINTIFF'S INJURY. THIS MEANS THAT PLAINTIFF MUST HAVE

PROVED THAT SOME DAMAGE FLOWED TO IT AS A RESULT OF DEFENDANT'S ALLEGED PRICE DISCRIMINATION.

DEFENDANT CLAIMS THAT ANY LOSS OF SALES OR PROFIT BY PLAINTIFF RESULTED FROM THINGS SUCH AS PLAINTIFF'S POOR BUSINESS PRACTICES, PLAINTIFF'S LACK OF EFFORTS TO SELL TO CUSTOMERS OTHER THAN LARGE FLEET CUSTOMERS, THE DISAPPEARANCE OF PLAINTIFF'S KEY CUSTOMER, AND OTHER FACTORS NOT RELATED TO THE ALLEGED PRICE DISCRIMINATION BY DEFENDANT.

PLAINTIFF IS NOT REQUIRED TO PROVE THAT DEFENDANT'S ALLEGED PRICE DISCRIMINATION WAS THE SOLE CAUSE OF ITS INJURY. IN ADDITION, PLAINTIFF IS NOT REQUIRED TO ELIMINATE ALL OTHER POSSIBLE CAUSES OF INJURY TO ESTABLISH CAUSATION. IT IS ENOUGH IF PLAINTIFF HAS PROVED THAT THE ALLEGED PRICE DISCRIMINATION WAS A MATERIAL CAUSE OF ITS INJURY.

IF YOU FIND THAT PLAINTIFF'S INJURY WAS CAUSED BY SOMETHING OTHER THAN THE ALLEGED PRICE DISCRIMINATION BY DEFENDANT, THEN YOU MUST FIND THAT PLAINTIFF HAS FAILED TO PROVE THAT IT IS ENTITLED TO RECOVER DAMAGES FROM DEFENDANT.

3A KEVIN F. O'MALLEY ET AL., FEDERAL JURY PRACTICE AND INSTRUCTION § 150.230 (5th ed. 2001) (Modified).

INSTRUCTION NO. 22

COMPENSATORY DAMAGES – PRICE DISCRIMINATION

(ROBINSON-PATMAN ACT, 15 U.S.C. § 13(a))

IF YOU SHOULD FIND FROM A PREPONDERANCE OF THE EVIDENCE THAT PLAINTIFF IS ENTITLED TO A VERDICT UNDER THE ROBINSON-PATMAN ACT, THE LAW PROVIDES THAT PLAINTIFF IS TO BE FAIRLY COMPENSATED FOR ALL DAMAGES, IF ANY, TO PLAINTIFF'S BUSINESS OR PROPERTY THAT WERE PROXIMATELY CAUSED BY THE CONDUCT OF THE DEFENDANT.

IN ARRIVING AT THE AMOUNT OF THE AWARD, YOU SHOULD INCLUDE ANY DAMAGES SUFFERED BY PLAINTIFF BECAUSE OF LOST PROFITS; THAT IS TO SAY PROFITS THAT PLAINTIFF WOULD HAVE MADE BUT FOR THE UNLAWFUL CONDUCT OF THE DEFENDANT.

IF YOU SHOULD FIND FROM A PREPONDERANCE OF THE EVIDENCE THAT DAMAGE TO PLAINTIFFS BUSINESS, OR PROPERTY WAS PROXIMATELY CAUSED BY DEFENDANT'S CONDUCT, THEN THE CIRCUMSTANCES THAT THE PRECISE AMOUNT OF PLAINTIFF'S DAMAGES MAY BE DIFFICULT TO ASCERTAIN SHOULD NOT AFFECT PLAINTIFF'S RECOVERY, PARTICULARLY IF THE DEFENDANT'S WRONGDOINGS HAVE CAUSED THE DIFFICULTY IN DETERMINING THE PRECISE AMOUNT.

ON THE OTHER HAND, PLAINTIFF IS NOT TO BE AWARDED PURELY SPECULATIVE DAMAGES. AN ALLOWANCE FOR LOST PROFITS MAY BE INCLUDED IN THE DAMAGES AWARDED ONLY WHEN THERE IS

SOME REASONABLE BASIS IN THE EVIDENCE FOR DETERMINING THAT PLAINTIFF HAS IN FACT SUFFERED A LOSS OF PROFITS, EVEN THOUGH THE AMOUNT OF SUCH LOSS IS DIFFICULT OF ASCERTAINMENT.

IN ARRIVING AT THE AMOUNT OF ANY LOST PROFITS SUSTAINED BY PLAINTIFF, YOU ARE ENTITLED TO CONSIDER ANY PAST EARNINGS OF PLAINTIFF IN THE BUSINESS IN QUESTION, AS WELL AS ANY OTHER EVIDENCE IN THE CASE BEARING UPON THE ISSUE.

IN DETERMINING THE AMOUNT OF ANY LOST PROFITS, YOU MAY CONSIDER WHETHER PLAINTIFF HAS PROVED THAT DEFENDANT'S CONDUCT HAS CAUSED DAMAGE TO THE VALUE OF ITS DEALERSHIP BUSINESS. YOU ARE INSTRUCTED THAT THE EVIDENCE OF LOSS OF BUSINESS VALUE IS ONLY RELEVANT TO THE ISSUE OF LOST PROFITS. THE LOSS OF BUSINESS VALUE CANNOT BE CONSIDERED AS AN ELEMENT OF DAMAGE SEPARATE FROM AND IN ADDITION TO THE LOST PROFITS.

3A KEVIN F. O'MALLEY ET AL., Federal Jury Practice And Instructions §§150.90, 91 (5th ed. 2001) (Modified); 3 DEVITT, BLACKMAR AND WOLFF, FEDERAL JURY PRACTICE AND INSTRUCTIONS, §§ 86.01, .04, .05, .06 (4th ed. 1987) (modified).

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

REEDER-SIMCO GMC, INC. PLAINTIFF

V. Civil No. 00-2031

VOLVO GM HEAVY TRUCK CORPORATION n/k/a VOLVO TRUCKS NORTH AMERICA, INC. DEFENDANTS

MEMORANDUM OPINION

[Filed Mar. 1, 2002]

On this 1st day of March 2002, there comes on for consideration the motion for award of treble damages and attorneys' fees and costs submitted by Plaintiff ("Reeder-Simco"). (Doc. #96.) Plaintiff sued Defendant ("Volvo") for damages for violation of the Arkansas Franchise Practices Act, ARK. CODE ANN, § 4-72-201 *et seq.* (AFPA), and for price discrimination under the Robinson-Patman Act, 15 U.S.C. § 13(a). At the conclusion of a jury trial, Reeder-Simco was awarded damages against Volvo in the amount of $513,750.00 on the AFPA claim and $1,358,000.00 on the price discrimination claim. The parties were directed to submit briefs and affidavits with regard to the issues of treble damages and attorneys' fees and costs. These pleadings have now been filed with the court.

After reviewing the motion and materials provided by Reeder-Simco and its attorney, Joe D. Byars, Jr., and considering the Volvo's response thereto, the Court finds that Reeder-Simco was the prevailing party in this action and, pursuant to ARK. CODE ANN. § 4-72-208(b) and 15 U.S.C. § 15(a), the court may, in its discretion, award a reasonable attorneys' fee. The damage award for the price

discrimination claim should also be trebled pursuant to 15 U.S.C. § 15(a).

I. Treble Damages.

The Clayton Act provides that a prevailing party in a price discrimination suit brought under anti-trust "shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee." 15 U.S.C. § 15(a). The parties do not disagree that the law requires this court to triple the damage award for the price discrimination claim. Accordingly, the court shall enter judgment for damages on the price discrimination claim in the amount of $4,074,000 (four million, seventy-four thousand dollars).

II. Attorneys' Fees and Costs.

Reeder-Simco is also entitled to recover a reasonable attorney's fee and costs of suit. *Id.* The landmark case in relation to fixing fees is *Hensley v. Eckerhart,* 461 U.S. 424, 103 S. Ct. 1933, 76 L. Ed.2d 40 (1983).[1] In *Hensley,* the Supreme Court set forth a method to be utilized in calculating the amount of the fee award. The court is to first establish the lodestar amount – the number of hours reasonably expended multiplied by the applicable hourly rate for legal services. This is true regardless of the fee arrangement between the attorney and client. *Blanchard v. Bergeron,* 489 U.S. 87, 109 S. Ct. 939, 103 L. Ed.2d 67 (1989); *see also H.J. Inc, v. Flygt Corp.,* 925 F.2d 257, 260

[1] In *Hensley* the Court was construing the provision for attorney fees found in 42 U.S.C. § 1988. However, "[t]he standards set forth in [the Hensley opinion] are generally applicable in all cases in which Congress has authorized an award of fees to a 'prevailing party.'" *Hensley v. Eckerhart,* 461 U.S. at 433, f.n.7.

(8th Cir. 1991) (holding that proper method for determining fee award under Clayton Act is to first calculate lodestar figure). The plaintiff bears the burden of "establishing an accurate and reliable factual basis for an award of attorneys' fees." *Philipp v. ANR Freight System, Inc.,* 61 F.3d 669, 675 (8th Cir. 1995) (*citing, Hensley v. Eckerhart,* 461 U.S. 424, 437, 103 S. Ct. 1933, 1941, 76 L. Ed.2d 40 (1983)).

Fees should be reasonable regardless of who is footing the bill. In determining the amount of hours reasonably expended, the Supreme Court has indicated counsel are expected to exercise billing judgment and courts should exclude from the initial fee calculation hours that were not reasonably expended:

> Counsel for the prevailing party should make a good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission. "In the private sector, 'billing judgment' is an important component in fee setting. It is no less important here. Hours that are not properly billed to one's client also are not properly billed to one's *adversary* pursuant to statutory authority."

Hensley, 461 U.S. at 434 (quoting *Copeland v. Marshall,* 205 U.S. App. D.C. 390, 401, 641 F.2d 880, 891 (D.C. Cir. 1980) (en banc) (emphasis in original)). The reasonable rate is determined by reference to the market place. *Missouri v. Jenkins by Agyei,* 491 U.S. 274, 285, 109 S. Ct. 2463, 105 L. Ed.2d 229 (1989).

Once the lodestar amount has been determined, the court must consider whether other factors not considered

in arriving at the lodestar amount suggest upward or downward adjustment to arrive at the appropriate fee award. *Hensley,* 461 U.S. at 434. The court should consider the following twelve factors in arriving at a final determination with regard to the amount of attorney's fees:

> (1) the time and labor required; (2) the novelty and difficulty of questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Winter v. Cerro Gordo County Conservation Bd., 925 F.2d 1069, 1074 n.8 (8th Cir. 1991) (*citing*, *Hensley*, 461 U.S. at 430 n.3). *See also Casey v. City of Cabool, Missouri,* 12 F.3d 799 (8th Cir. 1993) (discussing opportunity cost of the lawyer's time and relevant market); *Morning Pioneer, Inc. v. Bismarck Tribune Company,* 498 F.2d 838, 388 n.15 (8th Cir.1974) (citing appropriate factors for consideration when assessing reasonable attorney's fee in an anti-trust case).

The Supreme Court has indicated that "many of [the twelve] factors usually are subsumed within the initial calculation of hours reasonably expended at a reasonable rate." *Hensley*, 461 U.S. at 434, n.9 (citation omitted). The Eighth Circuit is in agreement: "'The lodestar award (the product of reasonable hours multiplied by a reasonable rate) is presumptively a reasonable fee, and most factors

relevant to determining the amount of a fee are subsumed within the lodestar.'" *Casey v. City of Cabool, Missouri,* 12 F.3d 799, 805 (8th Cir. 1993).

Reeder-Simco has filed motion to recover attorneys' fees of $175,070 and $27,417.42 in costs. (Doc. #96.) In support of the motion, Mr. Byars, Reeder-Simco's attorney, has provided an affidavit and itemized billing statement. We note that the fee itemization consists of come 32 pages. It begins with an entry dated December 16, 1999 and ends with a final entry on January 30, 2002. The total hours billed is 1,138.8.

Volvo does not generally object to Mr. Byars' requested hourly rate of $150, but does object to Mr. Byars' use of block billing in the hourly billing records. Volvo claims the block billing makes it difficult to accurately review the statement for hours spent on unrelated or unsuccessful claims. Volvo seeks to exclude from the initial fee calculation hours that were not reasonably expended, and contends that any uncertainties in the number of hours to be excluded should be resolved against Reeder-Simco. We shall address each specific objection in turn.

A. Fees and Costs Related to Kimberly O'Dell.

Ms. O'Dell is a certified public accountant retained by Reeder-Simco to provide a report and expert testimony on the issue of damages. Although Ms. O'Dell prepared three reports on the issue, she was not called to testify at trial. After deposing Ms. O'Dell, Volvo filed a motion seeking to exclude her from testifying as an expert, contending that her methods were unreliable and her conclusions were based upon speculation. The motion was denied as moot after Reeder-Simco withdrew Ms. O'Dell's designation as an expert witness and agreed to exclude her testimony.

Volvo claims that all hours spent conferring with Ms. O'Dell, obtaining information for her use, and expenses relating to her work in the case should be disallowed. Reeder-Simco responds that even though the expert was not called to testify, much of the time spent in consultation with Ms. O'Dell was of some benefit to the attorney in the presentation of damages calculations.

The court finds that Ms. O'Dell was an "expert" of plaintiff's choosing, that a better qualified expert could have been selected at the outset, and that Ms. O'Dell did not provide a report or testimony for use at trial. We find, however, that Ms. O'Dell was of assistance to Reeder-Simco in the preparation of the case for trial in that the proving of damages is one of the most difficult aspects of anti-trust litigation. Therefore, we think it is reasonable to exclude one-third of the fees and expenses billed with regard to Ms. O'Dell. Volvo estimates the total attorney time to be 55.7 hours, and, accordingly, 18.5 hours ($2,775) will be deducted from the initial fee calculation. In addition, the total expenses of $7,400 will be reduced by one-third, and $2,242 will be deducted from the allowed expenses.

B. Hours Billed by Mr. Christian.

Eddie Christian is Mr. Byars' partner, and was present at counsel table during the seven-day trial in this case. Mr. Christian's presentations during the trial were limited to reading several depositions aloud and delivering a portion of Reeder-Simco's closing argument. Mr. Christian is a well experienced trial attorney who often practices in our court. Volvo objects to the 97 hours billed by Mr. Christian as unnecessary and excessive. Reeder-Simco responds that Mr. Christian provided "substantial and valuable consultation, strategic planning and analysis prior to, throughout trial,

and after hours during the course of the trial." (Pl.'s Reply Def.'s Response at 4.) Reeder-Simco also points out that Volvo had two attorneys present at counsel table throughout the trial.

We do not think it unreasonable for a plaintiff to have two qualified and well-prepared attorneys sit at counsel table through a long and complex trial, even if only one has the primary "speaking part." We do not find the time entries to be too vague. The court is well aware of the dates of the trial and how many hours per day the attorneys for both parties spent inside the courthouse. Accordingly, we decline to reduce the fee calculation with regard to Mr. Christian.

C. Data Tech Systems.

Data Tech Systems consulted with Reeder-Simco's attorney on matters relating to the sorting and analysis of computerized data provided by Volvo during discovery. Volvo claims the fees and costs associated with this endeavor were unnecessary and unreasonable. Reeder-Simco contends that the computer consultants were necessary to convert formats and write programs to conduct searches within the mass of data provided.

The court recalls the detailed and lengthy presentation of evidence on sales comparisons between different Volvo dealers which was drawn from computer generated data. We do not find that the use of computer consultants was unnecessary or unreasonable in this case. Therefore, the fees and costs will not be reduced with regard to these items.

D. Claims Dropped or Dismissed Before Trial.

Volvo contends that the total hours claimed should be reduced by five percent, because the billing records do not provide a detailed listing of the hours that were attributed to claims not presented at trial. Mr. Byars stated in his affidavit that the amount claimed did not include services rendered in connection with actions other than the price discrimination claim and the AFPA claim. However, Volvo finds this unacceptable, because Volvo cannot evaluate whether the reductions were reasonable.

We have reviewed the itemized billing statement and do not find that hours spent working on the dropped or dismissed causes of action have been included. Nor do we find the overall fee calculation to be excessive or unreasonable. Accordingly, no adjustment will be made with regard to this objection.

E. Time Attributable to Other Matters.

Over the course of the instant litigation, Reeder-Simco and Volvo were parties to a related administrative matter before the Arkansas Motor Vehicle Commission. In addition, Volvo was the plaintiff in a lawsuit against the commission that was filed in the Eastern District of Arkansas. Volvo contends that time spent by Mr. Byars working on either of the related matters should be excluded from the total fee calculation. Plaintiff contends that no hours for the related matters were included in the fee request.

While the court recognizes the potential for overlapping time, we do not find the total hours requested to be excessive or unreasonable. However, Reeder-Simco did not file a complaint in intervention in this case, so the hours

billed with regard to the "plea in intervention" and the "motion to intervene" should be excluded. Accordingly, the court will deduct two hours of Mr. Byars' time ($300) from the total fee calculation.

F. Reduced Rate For Travel.

Volvo asserts that all travel time should be reimbursed at a reduced hourly rate of $100. Mr. Byars did reduce the hourly rate for some of his travel time, but other times he billed his full rate of $150 per hour. Mr. Byars contends that the full rate was earned, because the travel time was spent preparing for the depositions of the witnesses he was traveling to see.

While we do not dispute that Mr. Byars did work while traveling, it is the plaintiff's burden to establish the factual basis for the award of fees. The itemization entries for April 12, 2001 and November 16, 2001 do not show that the travel time was spent preparing for the depositions. Accordingly, the total fee calculation will be reduced by $525 (10.5. hours x $50/hr).

G. Limited Success on Motions to compel.

Reeder-Simco spent a great deal of time seeking discovery in this matter. Volvo contends that much of the time should be disallowed because Reeder-Simco motions to compel achieved only limited success. Reeder-Simco disagrees.

After reviewing the court records and files, we find that, while Reeder-Simco was unable to obtain all of the information sought, the discovery efforts did procure sufficient evidence to convince the jury to award substantial damages. It also appears that Volvo was not readily forthcoming with the information sought during the

discovery phase. Finally, the case was complex and well defended by the attorneys representing the defendant. Accordingly, we find that the total hours spent with regard to discovery is not unreasonable, and no adjustment shall be made.

H. The Phantom Motion for Sanctions.

Reeder-Simco was billed 2.5 hours for consideration of and research for a motion for sanctions that was never filed. Volvo objects to these items as unreasonable and unnecessary. Mr. Byars responds that the motion for sanctions was seriously considered and would have been based upon statements made by Volvo opposing the motions to compel that were later proven false by witness testimony.

As Reeder-Simco prevailed in the trial, we feel that awarding attorney's fees for consideration of a motion for sanctions would be the same as granting such a motion. Accordingly, the total fee calculation will be reduced by 2.5 hours ($375).

I. Other Factors Not Considered in Lodestar Amount.

Based upon the foregoing analysis, the Court has determined that Reeder-Simco's initial lodestar calculation of $175,070 in fees should be reduced by $3,975 and the costs of $27,417.42 should be reduced by $2,242. Reeder-Simco has not asked the Court to consider any other factors that would merit upward adjustment, and none will be made.

III. Conclusion.

For the reasons stated, plaintiff's motion for treble damages and attorneys' fees and costs is GRANTED.

Accordingly, judgment shall be entered for Reeder-Simco as follows:

1. Damages in the amount of $513,750.00 shall be awarded on the AFPA claim;

2. treble damages in the amount of $4,074,000.00 shall be awarded on the price discrimination claim;

3. attorney's fees and costs shall be awarded in the amounts of $171,095.00 and $25,175.42 each, respectively.

A separate judgment shall be filed concurrently herewith.

IT IS SO ORDERED.

/s/ Robert T. Dawson
Robert T. Dawson
United States District Judge